

# Spectrum's Response to State of Nebraska's Optical Ethernet RFP 5495 Z1

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Presented to:

Mr. Robert Thompson  
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Lincoln, NE 68508  
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State of Nebraska

Presented by:



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Charter Fiberlink-Nebraska, LLC

Thursday, January 26, 2017



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Mr. Robert Thompson  
(402) 471-2089  
State of Nebraska  
1526 K Street, Suite 130  
Lincoln, NE 68508  
as.materielpurchasing@nebraska.gov

Dear Mr. Thompson:

Charter Communications™ (Spectrum) is grateful for State of Nebraska's consideration in regards to your request for competitive bids for Optical Ethernet service.

Spectrum offers the following proposal to State of Nebraska in response to your Request for Proposal (RFP) due Thursday, January 26, 2017. This proposal shall not be considered an acceptance of any offer by State of Nebraska or otherwise create a binding contract between State of Nebraska and Spectrum. This proposal is submitted with the express understanding that the specific, comprehensive terms under which Spectrum and State of Nebraska may enter into a binding contract are understood to be subject to negotiation between the parties hereafter. The terms of this proposal are confidential and should not be disclosed directly or indirectly to any third party, except as may be required by law.

This proposal may assume a certain minimum level of acceptance of our bid. Therefore, in the event only a portion of Spectrum's proposal is accepted, our offer may be affected, and thus, Spectrum requests to review any such partial acceptance before final acceptance.

Thank you for the opportunity to submit the enclosed response to your RFP. We look forward to the opportunity to review our proposal with you in detail and to implement the recommendations we are making.

Sincerely,

A handwritten signature in blue ink that reads "Sonya Callahan".

Ms. Sonya Callahan  
Dir, Sales Strategic Accts  
Charter Communications Inc.

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\* Spectrum Business is the commercial brand of Charter Communications, Inc. The legal entity proposing hereunder is Charter Fiberlink-Nebraska, LLC, a subsidiary of Charter Communications, Inc.

# Table of Contents

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Executive Summary.....	4
About Charter Communications.....	7
References.....	8
CE 1.0 & 2.0 MEF Certification Registry .....	9
Spectrum Business Ethernet Experience .....	10
Layer 2 vs. Layer 3.....	12
Optical Ethernet Class of Service .....	13
Optical Ethernet Disaster Recovery .....	15
What is CE 1.0 & 2.0 MEF Certification?.....	16
Enterprise and Strategic Markets Network Operations Center .....	17
Project Management Office Experience.....	18
Spectrum's Response to State of Nebraska.....	19
Addendum - 1 .....	69
Addendum - 2.....	70
Addendum - 3.....	73
Addendum - 4.....	75
Addendum - 5.....	77
Certificate of Insurance.....	78
Appendix - A .....	80
Master Service Agreement, Contract 70988 04.....	81

## Executive Summary

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Spectrum is pleased to provide this response illustrating our ability to provide State of Nebraska with communications services. We take pride in being an innovative resource for businesses and communities. Our reliable and economical service is a natural fit with your mission.

Spectrum Enterprise ("Spectrum"), a division of Charter Communications, is pleased to provide this response illustrating our ability to provide State of Nebraska with communications services. We take pride in being an innovative resource for businesses and communities. Our reliable and economical service is a natural fit with your mission.

In May 2016, Charter Communications completed the merger transactions with Time Warner Cable ("TWC" and "TWCBC") and Bright House Networks ("BHN"). We are now one company, the fastest growing national provider of scalable, fiber-based technology solutions serving many of America's largest businesses and communications service providers. Our broad portfolio includes Internet access, Ethernet access and networks, Voice, and TV solutions, and extends to Managed IT solutions including Application, Cloud Infrastructure, and Managed Hosting Services offered by its affiliate, NaviSite. Our industry-leading team of experts work closely with clients to achieve greater business success by providing these right fit solutions designed to meet their evolving needs.

### Bring Advanced and Affordable Technology to Your Schools

Advanced communications services and computing technologies in the classroom have become vital to education. Unfortunately, today's challenging economic environment has put education and technology budgets under tremendous pressure. It is a challenge for schools to get access to technologies that help drive greater student achievements.

The Federal Government created the E-rate Program to help with the need for communications services and budgeting problems. Funded by the Universal Service Administrative Company (USAC), this program offers 20-90 percent off standard retail rates on eligible communications services to eligible schools, libraries, and their districts. Federally funded E-rate discounts have made today's technology more affordable.

### The Spectrum Solution

Since 1998, Spectrum has worked with thousands of E-rate accounts. We understand the E-rate program and how best to benefit from it. Our experience in this area will provide E-rate specialists who understand:

- rules and regulations to participate in the program
- understand billing and standard discounts

Technology and education have converged, and your communications needs are growing rapidly. Spectrum will provide solutions that will benefit teachers, administrators, parents, and students.



## Get Powerful Services with the Financial Benefits of E-rate

Research shows that technology use is a top-five indicator of better discipline, better attendance, and increases in college attendance. Educational organizations are leveraging E-rate by partnering with Spectrum to reduce cost and implement technology for greater student achievement. We have invested the time and effort to ensure our sales and support teams have the expertise to help you get the best services through the E-rate program.

## Unsurpassed Expertise and Customer Support

A network of specially trained, industry experts supports Spectrum. We have around the clock, U.S.-based business support centers and knowledgeable, locally based technicians who are specifically trained to help with your unique needs. Our dedicated work ethic, shared knowledge, and proprietary systems allow us to ensure that the solutions we are quoting State of Nebraska will match your specific and discrete needs.

When you collaborate with Spectrum for communications services, we assign a dedicated account team who will support your services:

- **Accounts Executive:** a dedicated, local market expert who is available for your consultation needs
- **Sales Engineering:** trained technical experts who customize designs based on your needs.
- **E-rate Specialists:** experienced with E-rate rules and regulations and are billing and standard discounts experts
- **Project Management:** customer focused experts who manage your build and communicate with you every step of the way
- **Account Manager:** your point of contact; responsible for providing you with accurate billing and consultation on future growth needs
- **Network Operations Center:** Spectrum staff that continuously monitors the network

## Implementation Plan

Spectrum has detailed processes in place to ensure installations occur in a timely fashion and to your required timeframe. Upon award of the project, Spectrum will meet with your technical staff to create the project work plan. The work plan will include an assessment of site readiness with specific recommendations based upon site visits. Spectrum will jointly prepare a project work schedule with State of Nebraska, identifying key project milestones.

We will assign a team experienced in designing, implementing, and maintain large-scale networks to this project. We dedicate in-house project managers to projects who will be the point of contact for the entire project life cycle. Our project managers understand the importance of meeting deadlines and satisfying customer expectations.

Spectrum operates with a team concept so that cross-checking of work outputs and resource backup is always in place, and more than one individual understands each process from beginning to end. Should an assigned team member becomes unavailable, qualified personnel, who are knowledgeable in the same processes and procedures used in this project, are accessible.

Upon completion of the construction, the project will be handed off to a local Network Technician who will install the Spectrum provided and owned Cisco or comparable switch(es), as applicable, at State of Nebraska's site. The Network Technician will work with the Network Operations Center to verify connectivity and to provision the correct bandwidth. We will notify you once installation and testing are complete, and service is available for use.

Spectrum's implementation plan is an estimate only. Milestones are projected dates. Actual dates and periods may vary due to, but not limited to, inclement weather. The below chart is an example of a 75-day timeline. The estimate for your service delivery is expected 90 days.

#### Sample Implementation Timeline

Description	Resource	Result	Time Duration
Project Initiation	Internal	Project released to Service Delivery. Project manager makes contact with Customer	1 week
Project Initiation	Internal	Internal kickoff design / BOM review, develop deployment strategy, review timelines, risks, project materials ordered, construction tasks begin	1 week
Project Execution	External	External kickoff call with Customer	1 week
Project Execution & Control	Internal / External	Recurring internal/external project meetings to update status, review action items, and go over project risks	1 week
Project Execution & Control	Internal / External	Weekly recurring internal and Customer project meetings, material receipt, fiber construction activities, facility build-outs, core equipment deployment, provisioning, risk mitigation, CPE deployment, test and turn-up for sites that become ready	4 weeks
Project Closure	Internal / External	Test and turn-up documents delivered to customer, CB NOC enrollment for monitoring	1 week

## About Charter Communications

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### Acquisition of Time Warner Cable and Bright House Networks

Charter Communications has completed the transactions with Time Warner Cable and Bright House Networks. We are proud to be the fastest growing TV, Internet, and Voice provider in the United States and are committed to bringing you the most advanced products and services for your home and business.

Exciting changes are in the works, but for now, Time Warner Cable, Bright House Networks, and Charter Communications will continue offering their current suite of services to customers in their markets. In the coming months, you will hear more from us as it relates to network, product and service improvements. Whether it is new ways to enjoy more shows with unrivaled picture quality, better service, or faster internet speeds, we cannot wait to show you what is next.

For more information about Charter, visit the [Charter Newsroom](#) or [Investor Relations](#).

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### Charter's History

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**1993**

Charter Communications  
incorporated in the state of  
Delaware.

**1999**

Charter became a publicly  
traded on NASDAQ.

**2001**

Charter became a Fortune  
500 Company.

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### Charter's Milestones

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#### Customer Service

Charter today employs  
approximately 90,000.



#### Customer Satisfaction

Charter provides service to more  
than 24 million customers in 41  
states.



#### Focused Growth

Charter's focus is on integrating  
the highest quality service with  
clearly superior entertainment  
and communications products.






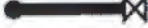
Charter is a leading broadband communications  
company and the second largest cable operator in  
the United States.




## References

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Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. Spectrum is a preferred vendor of the State. If references are needed, Spectrum will comply.

# CE 1.0 & 2.0 MEF Certification Registry

Carrier Ethernet 2.0 Metro-Ethernet Forum (MEF) Certified				
Service	E-Line EPL / EVPL 	E-LAN EP-LAN /EVP-LAN 	E-Tree EP-Tree /EVP-Tree 	E-Access Access EPL /Access EVPL 
Optical Ethernet			Test Report ID: CE2.0_242105_1215_E-Tree Issued on Dec 2015	
E-Access				Test Report ID: CE2.0_242105_1215_E-Access Issued on Dec 2015
Optical Ethernet	Test Report ID: CE2.0_242105_1215_E-Line Issued on Dec 2015			
E-Access				Test Report ID: CE2.0_242115_1215_E-Access Issued on Dec 2015
Optical Ethernet		Test Report ID: CE2.0_242105_1215_E-LAN Issued on Dec 2015		
E-Access				Test Report ID: CE2.0_242125_1215_E-Access Issued on Dec 2015
E-Access				Test Report ID: CE2.0_242135_1215_E-Access Issued on Dec 2015

Carrier Ethernet 1.0 (MEF 9 & MEF 14) Certified			
Service	EPL MEF 9 / MEF 14 	EVPL MEF 9 / MEF 14 	ELAN MEF 9 / MEF 14 
Spectrum Business® Optical Ethernet	Test Report ID: MEF9_242640_0708_EPL	Test Report ID: MEF9_242650_0708_EVPL	Test Report ID: MEF9_242660_0708_ELAN
	Issued on July 2008	Issued on July 2008	Issued on July 2008
	MEF14_242640_1209_EPL Issued on Dec 2009	MEF14_242650_1209_EVPL Issued on Dec 2009	MEF14_242660_1209_ELAN Issued on Dec 2009

# Spectrum Business Ethernet Experience

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Spectrum has provided Wide Area Network (WAN) services for over 18 years, with a long-standing record of accomplishment, providing Optical Ethernet services to K-12 schools, colleges/universities, hospital systems, and small-to-large enterprises. In recent years, we have added Long-Haul links utilizing our national backbone, which allows us to provide better service to our multi-state customers.

Our experience includes a tradition of customized WAN solutions to meet our customers' specific design parameters. Design standards include physical and logical network designs that provide flexibility to change and grow. This means that you can implement a design suitable to your current needs and evolve that design for the future.

## Service Overview

Spectrum's Optical Ethernet service is a scalable fiber-optic solution, providing bandwidth options ranging from 10 Mbps to 10 Gbps. Our Ethernet is available in three service types:

- EPL – Ethernet Private Line
- EVPL – Ethernet Virtual Private Line
- EP-LAN – Ethernet Local Area Network

Spectrum is Metro-Ethernet Forum (MEF) compliant. We have obtained CE 1.0 (MEF 9 & MEF 14) and CE 2.0 MEF certifications on all service types.

We design each network to provide a high level of availability and automatic failover in the event of failure of a component in the network. Our head-ends are physically and environmentally secured, have equipment that includes multiple paths, automatic failover, dual power supplies, and backup power to the facility.

## Network Designs

Final network design includes recommendations, coupled with your agreement on physical and logical network design factors to include:

- The physical plant consists of construction/installation of fibers from State of Nebraska facility to the nearest splice point. The fiber terminates at a Spectrum head-end, and all provisioning is managed on the core gear. We consider needs for diversity or redundancy while designing the physical plant. We will engage you to determine the optimal design.
- The logical design includes decisions on the implementation of the Ethernet services: Layer 2 vs. Layer 3, connectivity options (Point-to-Point, MultiPoint-to-Multipoint, and Point-to-MultiPoint or fully meshed), whether Border Gateway Protocol (BGP) routing is needed for failover of multiple internet connections, and connections to State of Nebraska's routing equipment.



## Operational Support

Critical to the success of any WAN is the ongoing operational support that State of Nebraska can expect.

Spectrum's support includes:

- **Technical Support, Monitoring, and Maintenance**

We provide 24/7/365 proactive monitoring of the service via the Spectrum Enterprise and Strategic Markets Network Operations Center (ESM NOC). Reported troubles escalate within the ESM NOC and to local network maintenance and repair technicians, as necessary. On-site technicians are typically Spectrum employees who reside locally to provide the quickest turnaround possible.

We provide customers with a list of escalation contacts after the test and turn-up process. This also includes one number to call for fiber support (866) 603-3199 and details on how to engage support when needed.

- **Preventative Network Maintenance**

We conduct proactive network maintenance between the hours of midnight and 6:00 a.m. local time. Spectrum will typically provide at least ten days' notice before conducting preventative maintenance.

- **Emergency Network Maintenance**

Emergency network maintenance is work that is not reasonably anticipated but requires immediate action to address an issue that is likely to cause a material service outage. We will typically provide notice to the customer of emergency network maintenance as soon as is practical and will do so in advance of such maintenance when reasonable.

- **Service Level Objectives**

Spectrum provides standard Service Level Agreements for the Wide Area Networks we maintain.

Availability is the measure of the percentage of time that the service is operational over a 30-day period. Our Availability objective starts at 99.50%.

We have designed and will install the most technologically sound and cost-effective solution possible for State of Nebraska. Our Optical Ethernet delivers the capacities and reliability required for today's needs within a flexible platform for future growth. The operational support is in place to maintain a healthy and robust network as it changes over time. We will have in-depth discussions confirming the network design recommendations with your Information Technology team before finalizing and implementing the design.

## Layer 2 vs. Layer 3

When deciding between a Layer 2 versus Layer 3 networking solution, it is best to evaluate the benefits of both and consider which one best fits your needs.

Vast majorities of enterprises today deploy Ethernet in their Local Area Networks, understand the benefits of Ethernet and prefer this technology when connecting to their service provider demarcation points. This is true regardless of whether the enterprise will purchase Layer 2 Ethernet or Layer 3 IP VPN service from their service provider. The decision to choose Ethernet Layer 2 or Layer 3 service ultimately depends on business criteria and the existing technology in place.

### Key Considerations:

Layer 2 Spectrum Business Optical Ethernet Service	Layer 3 Spectrum Business VPN Service
<ul style="list-style-type: none"> <li>• Control of Layer 3 networking and routing decisions end-to-end</li> <li>• Enables transparent Local Area Network (LAN) services by extending your LAN across the Metropolitan Area (MAN) and Wide Area (WAN) networks</li> <li>• Connect to the service using your existing switch or router</li> <li>• Private Layer 2 Ethernet Virtual Private Networks (VPN) offering varying Spectrum implemented connectivity options (point-to-point, multipoint-to-multi-point, point-to-multipoint)</li> <li>• Metro Ethernet Forum (MEF) standards based service offering</li> <li>• Highly flexible and scalable Ethernet bandwidth (in lieu of "bulky" TDM/SONET bandwidth increments)</li> <li>• National point-to-point and multipoint-to-multipoint connectivity</li> <li>• Transparently pass your Layer 3 protocols (IP, AppleTalk, DECnet, IPX, etc.) over the Spectrum Business Optical Ethernet service</li> <li>• Common Ethernet technology that most IT departments are familiar with</li> </ul>	<ul style="list-style-type: none"> <li>• While network and some routing control reside with us, your routing is limited only by max prefix list (many service providers do not allow customers to control routing with Layer 3 VPNs)</li> <li>• Scalable and simplified addition of connectivity to new customer locations to the existing service (explicit connection of the new location to each existing location not needed)</li> <li>• National support of any connectivity type</li> <li>• Border Gateway Protocol (BGP) routing protocol is supported</li> <li>• Full mesh connectivity between customer endpoints with customer routes determining which traffic reaches what destinations</li> <li>• Use a low cost Ethernet port from your existing Layer 3 equipment (router) to connect to this service</li> <li>• Common and ubiquitous IP protocol that most IT departments are familiar with</li> </ul>

# Optical Ethernet Class of Service

Spectrum Optical Ethernet service for Enterprise applications is a scalable fiber-optic solution with flexible bandwidth options ranging from 10 Mbps to 10 Gbps, and offers the following Service Configurations:

- Ethernet Private Line (EPL)
- Ethernet Virtual Private Line (EVPL)
- Ethernet Private LAN (EPLAN)

The Service Configurations connect State of Nebraska locations between Spectrum's Ethernet User Network Interfaces (UNI). All Service Configurations are available with Class of Service (CoS) and measured Service Level Agreements (SLA).

## Spectrum's Class of Service and Service Level Agreement

The Optical Ethernet Classes of Service (CoS) apply per Service Configuration with the CoS performance represented by the Service Level Agreement (SLA). The SLA measurements are made across the actual Service Configuration and represent the performance of the specific connection.

Optical Ethernet CoS		
CoS Name	Priority	Application Types
Premier	Highest	Mission critical, Low Delay/Loss sensitive applications (Real-time voice, video)
Express	Intermediate	Applications with some tolerance for Delay/Loss (Streaming apps, VPN, Backup)
Standard	None	Applications with higher tolerance for Delay/Loss (Internet, Site-to-site)

Optical Ethernet SLA					
Mileage Band	0-100	101-250	251-500	501-1,000	1,001+
Premier CoS: EPL, EVPL, EPLAN					
Availability	99.95%	99.95%	99.95%	99.95%	99.95%
Delay*	10 ms	20 ms	40 ms	60 ms	80 ms
Delay Variation	2 ms	2 ms	2 ms	2 ms	2 ms
Loss Ratio	0.05%	0.05%	0.05%	0.05%	0.05%
Express CoS: EPL, EVPL, EPLAN					
Availability	99.90%	99.90%	99.90%	99.90%	99.90%
Delay*	15 ms	30 ms	50 ms	80 ms	100 ms
Delay Variation	3 ms	3 ms	3 ms	3 ms	3 ms
Loss Ratio	0.10%	0.10%	0.10%	0.10%	0.10%
Standard CoS: EPL, EVPL, EPLAN					
Availability	99.50%	99.50%	99.50%	99.50%	99.50%

\*Round-Trip Metric

## Spectrum vs. the Competition: An SLA Comparison

Trying to compare SLAs between services providers is a difficult task. Terminology for the network performance metrics frequently differs. Delay and Delay Variation are often known as Latency and Jitter respectively, while Loss Ratio is sometimes called Packet Delivery Ratio. Matching terminology is just the beginning of difficulties for comparing SLAs, asking the following three questions can help:

### Where is SLA Measured?

Spectrum's SLA is measured end-to-end and applies to the entire circuit. Many Competitive Local Exchange Carriers (CLEC) do not own the end-to-end network for the services they quote and typically, their SLAs cover the core network. The service provider core network is the least likely area to experience an outage. This implies that the SLA may provide impressive looking protection but does not cover the access portion of the network, which is the area of greatest risk in the network. The network performance is reported to the customer on a monthly basis and may not represent the portion of the core network that the customer circuit traverses. Spectrum measures the entire circuit and from end to end.

### How is the SLA Measured?

We test customer circuits once every second continuously (2,592,000 times in a thirty-day month). Spectrum begins to count the unavailable time once a circuit goes down eleven seconds or more. Most service providers do not count the unavailable time until the customer has opened a trouble ticket. This requires identifying the outage, contacting the proper representative in the service provider NOC, and turning the circuit over for testing and outage confirmation. To the detriment of the customer, the circuit is down but the unavailable time is not accounted for in the SLA. Our customers know that the entire circuit measured, and outage information is immediately accounted for and gathered.

### What are the caveats to the SLA?

Spectrum excludes only maintenance windows and force majeure events from the SLA. Other service providers may apply additional exclusions to weaken their SLA metrics, which, on the surface, may appear impressive.

SLA Metric	SLA Metric Definition
Delay	Delay is the average round-trip transmission time of all SLA Probes for the Service Configuration over a Calendar month period.
Delay Variation	Delay Variation is the average transmission time difference in successive round-trip Delay SLA Probes for the Service Configuration over a Calendar month period.
Loss	Loss Ratio is the percentage ratio of total SLA Probes lost to the total round-trip SLA Probes sent across the Service Configuration over a Calendar month period.
Availability	Availability is the percentage of time within a Calendar month during which the Loss Ratio is small (less than 10 frames lost per test period).

## Optical Ethernet Disaster Recovery

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Recent large hurricanes and storms have shown that relying on local disaster recovery infrastructure can be risky since your work site and disaster recovery site may both become inoperable or inaccessible. Solving for this is just one reason enterprises utilize the long-haul option of Optical Ethernet from Spectrum.

Our Optical Ethernet services can connect your local area network (LAN) to backup facilities, storage sites or other offices across the U.S. where we serve customers.

With the below features, Optical Ethernet could be a part of your disaster recovery plan.

- Your traffic is encapsulated as Ethernet over Multiprotocol Label Switching (MPLS) and transported across Spectrum's National Backbone
- You can leverage either point-to-point or point-to-multipoint topologies
- Our service supports 10 Mbps to 1 Gbps, and we are MEF 1.0 (9 & 14) and MEF 2.0 compliant so that you can scale with an Enterprise ready service
- In addition to our Layer 2 Ethernet, we also offer Layer 3 Virtual Private Network (VPN), allowing you to choose the right configuration for your specific needs
- Prioritize your traffic by upgrading your Class of Service (CoS) for point to point and Multipoint-to-Multipoint connectivity types

By choosing Spectrum, you will have a direct line to specialized technicians in our dedicated business Enterprise and Strategic Markets Network Operations Center (ESM NOC). We build our Optical Ethernet circuits with 1 gigabit of capacity provisioned to your selected bandwidth. This translates to quick and easy scalability, often without the need for a site visit.

# What is CE 1.0 & 2.0 MEF Certification?

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## Carrier Ethernet 2.0 (E-Line, E-LAN, E-Tree and E-Access)

Carrier Ethernet (CE) 2.0 Certification became available in 2012. Spectrum was CE 2.0 certified in December 2015. CE 2.0 certification transitions the industry from 'Certification by Abstract Test Suites (ATS)' to 'Certification by Service'. Rather than seeking certification of a service as conforming to a Metro Ethernet Forum (MEF) ATS, the CE 2.0 certification verifies that the service conforms to the ATS as described in the CE 2.0 Certification Blueprint.

MEF Certification enables Service Providers and Operators to go to market with CE services to support the following market requirements:

- Subscribers demand that Service Providers offer services with predictable service functionality and performance. MEF certification increases the confidence of Subscribers that services offered to them meet functionality and performance requirements.
- Services RFPs need be less complex. Specifying the requirement for CE 2.0 certification in an RFP replaces long form descriptions of Subscriber requirements.

Services certification streamlines the interconnection services between different Service Providers and Operators.

Service Providers and Operators choosing equipment for Carrier Ethernet services have a large range of vendor suppliers. Commonly, Service Providers and Operators state mandatory requirements for MEF certification in their RFPs to Equipment Vendors, which reduces the need to assess multiple products. With potential products narrowed down, Service Providers and Operators save test time by relying on MEF certification, allowing them to focus on testing product features specific to their needs, rather than retesting standardized Carrier Ethernet functionality.

## Carrier Ethernet 1.0 (MEF 9 and MEF 14)

Spectrum has been CE 1.0 (MEF 9 & MEF 14) certified since July 2008 and December 2009.

MEF service provider members seeking to certify their Ethernet Private Line (EPL), Ethernet Virtual Private Line (EVPL) and Ethernet Local Area Network (E-LAN) services as conforming to MEF 9, MEF 14 and/or MEF 18 specifications within the Carrier Ethernet 1.0 generations framework can apply to the MEF Certification Test Lab (Iometrix) to schedule and prepare for independent, streamlined testing of their service(s).

The testing and certification in CE 1.0 (MEF 9 and MEF 14) is based on a 'Certification by ATS' model. Which translates to using a single ATS as the basis for each certification? MEF 9 is the ATS used as the basis of the test plan for conformance to EPL, EVPL and E-LAN functional specifications. MEF 14 is the ATS used as the basis of the test plan for conformance to performance specifications for EPL, EVPL and E-LAN.

To date, over 60 Service Providers have certified well over 200 CE services as conforming to MEF 9 and/or MEF 14.

# Enterprise and Strategic Markets Network Operations Center

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The business success of our customers depends on both speed and efficiency. The time taken to deploy, manage and maintain the standard operations of our Customer's network has a direct impact on their business needs. As our customer, we understand your need for a partner to help manage day-to-day network operations so that you can concentrate on your business.

**Spectrum is that partner.**

Spectrum's service capabilities are engineered on our legacy of building and maintaining large-scale networks, and our exemplary customer care is the result of combining personalized service and multi-million dollar technology investments.

For Spectrum, the issue of network reliability and response is so critical that it has created the Enterprise and Strategic Markets Network Operations Center (ESM NOC), a dedicated network operations center designed to monitor connections and services for enterprise customers; with an emphasis on guaranteed rapid response to all service issues. The ESM NOC is housed in a Spectrum call center facility in Louisville, Kentucky, with a fully redundant failover facility located in St. Louis, Missouri.

The ESM NOC provides an escalation list to our customers and service partners to ensure that adequate resources are mobilized quickly and tracked appropriately. Spectrum strives to ensure that underlying service issues are resolved in the shortest possible time.

The ESM NOC is staffed 24 hours a day, 7 days a week; 365 days a year and has a front line ESM NOC staff of 30 support technicians and a tiered support group of eight. The ESM NOC service levels (i.e., response to inbound calls within 30 seconds) have exceeded 80% for years and are one of our primary support metrics. The ESM NOC is available at 1 (866)-603-3199.

**With ESM NOC, State of Nebraska can count on the following support:**

- **Proactive Notification** from experienced technicians who monitor your services, the status of our network, and performance across the Internet
- **Direct Access** to technicians, who remain in personal contact with you, and assume immediate responsibility until any open issues are resolved. Most issues are resolved by the commercial support specialist who receives your request and initiates a trouble ticket
- **Rapid Response** from experienced technicians. Local support specialist answer all calls and nearly 94% of them are answered within 30 seconds
- **Technical Expertise** from highly-trained NOC technicians with advanced knowledge in network configuration, design, and maintenance, as well as troubleshooting network issues

# Project Management Office Experience

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## The Management Solution to Meet Your Needs

Spectrum's Service Delivery Management team is committed to deploying the highest quality network in the most efficient manner possible. A dedicated Project Manager from our national Project Management Office (PMO) will be assigned to coordinate all aspects of deployment for your services. Our PMO team has vast Fiber and Coaxial deployment knowledge with PMP certifications and over 20 years average experience.

Our Project Manager will interface with all Spectrum operations groups and key customer contacts. Routine project status meetings will occur to keep State of Nebraska's personnel up-to-date on deployment progress. The PMO is responsible for controlling projects to ensure they are completed on time and delivered to State of Nebraska's expectations. Standard responsibilities include:

- Plans activities and controls project deliverables
- Manages time, resources and costs
- Identifies all project requirements
- Identifies areas of risk and mitigating actions
- Provides a single point of contact for internal and external stakeholders
- Hosts routine (typically weekly) project meetings with appropriate Spectrum and State of Nebraska staff members
- Provides a single forum for communicating milestone status, assessing changes and tracking progress
- Leads any problem-solving efforts and necessary escalations
- Provides technical documentation support as required
- Completes Project close-out documentation, including as-built updates, Circuit IDs, and test results
- Executes on statement of work

Once an order is received within Spectrum, a Project Manager is assigned from our national team. Routine meetings will commence with the customer, and project management will begin. Please review Spectrum's Implementation section, located in the Executive Summary for a breakdown of key project milestones.

# Spectrum's Response to State of Nebraska

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Spectrum is pleased to submit this formal proposal for Optical Ethernet service to State of Nebraska. On the pages to follow, Spectrum has responded to your Request for Proposal and addressed the requirements to demonstrate that we can provide you with the best, most timely, cost effective solution to meet your needs. We based our responses on an understanding of your needs from both a technical and a business perspective. Whenever possible we linked our responses back to your needs to show you not only what we offer, but why it matters to you. We also provided evidence of our competence to deliver solutions in a professional manner, and have indicated the value of our recommendations for you.

As the second largest cable operator in the United States, Spectrum can provide customized solutions in several marketplaces that are unified, powerful, cost-effective, easily managed, and perhaps most importantly, reliable.

We understand that not all businesses have the same needs. We offer a wide array of solutions -from reliable connectivity, cloud hosting, remote accessibility, to business continuity - so that we can address your business needs more precisely and help you to achieve more.

Spectrum owns and operates our network from end-to-end and offers one phone number to call after installation for all support and service inquiries. There is never any question as to how to get help and who will be supporting you should you ever need assistance.

- **Service and Savings:** Owning our network allows us to not only manage and monitor your services, but also pass cost savings on to our end customers with highly competitive rates
- **Reliable connectivity:** With dedicated connectivity up to 10 Gbps, Spectrum can offer the newest technology and services
- **Adaptability:** Spectrum offers future-proof solutions that are scalable and flexible to adapt to our customers changing requirements
- **Service:** We serve all of our customers with a dedicated team of Account Executives with supporting teams that understand complex requirements for acquiring, funding and installing solutions like yours

We invite you to review the following response and discover how Spectrum can provide a solution for you. Our customers value our knowledge and understanding of their challenges, objectives, operating environments, and rely on our accumulation of best practices from the industry. We realize that your initiatives can often create more ways to use our services than was originally anticipated, so you need to be able to adapt quickly, as demand increases. Since we design solutions that solve your specific needs and anticipate future growth needs, we know that you will achieve the results that you expect from your communications partner now, and into the future.



**State of Nebraska (State Purchasing Bureau)  
REQUEST FOR PROPOSAL FOR CONTRACTUAL  
SERVICES FORM**

RETURN TO:  
State Purchasing Bureau  
1526 K Street, Suite 130  
Lincoln, Nebraska 68508  
Phone: 402-471-6500  
Fax: 402-471-2089

SOLICITATION NUMBER	RELEASE DATE
<b>5495 Z1</b>	<b>December 20, 2016</b>
OPENING DATE AND TIME	PROCUREMENT CONTACT
<b>January 19, 2017 2:00 p.m. Central Time</b>	<b>Robert Thompson / Michelle Thompson</b>

This form is part of the specification package and must be signed in ink and returned, along with proposal documents, by the opening date and time specified.

**PLEASE READ CAREFULLY!**

**SCOPE OF SERVICE**

The State of Nebraska, Administrative Services (AS), Materiel Division, State Purchasing Bureau, is issuing this Request for Proposal, RFP Number 5495 Z1 for the purpose of selecting a qualified Contractor to provide High speed transport services for participants of Network Nebraska-Education.

Written questions are due no later than December 30, 2016, and should be submitted via e-mail to [as.materielpurchasing@nebraska.gov](mailto:as.materielpurchasing@nebraska.gov) Written questions may also be sent by facsimile to (402) 471-2089.

Bidder should submit one (1) original of the entire proposal. Proposals must be submitted by the proposal due date and time. PROPOSALS MUST MEET THE REQUIREMENTS OUTLINED IN THIS REQUEST FOR PROPOSAL TO BE CONSIDERED VALID. PROPOSALS WILL BE REJECTED IF NOT IN COMPLIANCE WITH THESE REQUIREMENTS.

1. Sealed proposals must be received in State Purchasing Bureau by the date and time of proposal opening indicated above. No late proposals will be accepted. No electronic, e-mail, fax, voice, or telephone proposals will be accepted.
2. This form "REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES" MUST be manually signed, in ink, and returned by the proposal opening date and time along with bidder's proposal and any other requirements as specified in the Request for Proposal in order for a bidder's proposal to be evaluated.
3. It is the responsibility of the bidder to check the website for all information relevant to this solicitation to include addenda and/or amendments issued prior to the opening date. Website address is as follows:  
<http://das.nebraska.gov/materiel/purchasing.html>

**IMPORTANT NOTICE:** Pursuant to Neb. Rev. Stat. § 84-602.02, all State contracts in effect as of January 1, 2014, and all contracts entered into thereafter, will be posted to a public website. Beginning July 1, 2014, all contracts will be posted to a public website managed by the Department of Administrative Services.

In addition, all responses to Requests for Proposals will be posted to the Department of Administrative Services public website. The public posting will include figures, illustrations, photographs, charts, or other supplementary material. Proprietary information identified and marked according to state law is exempt from posting. To exempt proprietary information you must submit a written showing that the release of the information would give an advantage to named business competitor(s) and show that the named business competitor(s) will gain a demonstrated advantage by disclosure of information. The mere assertion that information is proprietary is not sufficient. (Attorney General Opinion No. 92068, April 27, 1992) The agency will then determine if the interests served by nondisclosure outweigh any public purpose served by disclosure. Cost proposals will not be considered proprietary.

To facilitate such public postings, the State of Nebraska reserves a royalty-free, nonexclusive, and irrevocable right to copy, reproduce, publish, post to a website, or otherwise use any contract or response to this RFP for any purpose, and to authorize others to use the documents. Any individual or entity awarded a contract, or who submits a response to this RFP, specifically waives any copyright or other protection the contract or response to the RFP may have; and, acknowledge that they have the ability and authority to enter into such waiver. This reservation and waiver is a prerequisite for submitting a response to this RFP and award of the contract. Failure to agree to the reservation and waiver of protection will result in the response to the RFP being non-conforming and rejected.

Any entity awarded a contract or submitting a RFP agrees not to sue, file a claim, or make a demand of any kind, and will indemnify, hold, and save harmless the State and its employees, volunteers, agents, and its elected and appointed officials from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State, arising out of, resulting from, or attributable to the posting of contracts, RFPs and related documents.



## BIDDER MUST COMPLETE THE FOLLOWING

By signing this Request for Proposal for Contractual Services form, the bidder guarantees compliance with the provisions stated in this Request for Proposal, agrees to the terms and conditions unless otherwise agreed to (see Section III) and certifies that bidder maintains a drug free work place environment.

**Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.**

Per Nebraska's Transparency in Government Procurement Act, Neb. Rev Stat § 73-603 DAS is required to collect statistical information regarding the number of contracts awarded to Nebraska Contractors. This information is for statistical purposes only and will not be considered for contract award purposes.

X **NEBRASKA CONTRACTOR AFFIDAVIT:** Bidder hereby attests that bidder is a Nebraska Contractor. "Nebraska Contractor" shall mean any bidder who has maintained a bona fide place of business and at least one employee within this state for at least the six (6) months immediately preceding the posting date of this RFP.

\_\_\_\_\_ I hereby certify that I am a **Resident disabled veteran or business located in a designated enterprise zone** in accordance with Neb. Rev. Stat. § 73-107 and wish to have preference, if applicable, considered in the award of this contract.

FIRM: Charter Fiberlink-Nebraska, LLC

COMPLETE ADDRESS: 14205 Powerscourt Dr. St. Louis, MO 63131

TELEPHONE NUMBER: (402) 421-0396 FAX NUMBER: \_\_\_\_\_

SIGNATURE:  DATE: 01/26/2017

## I. SCOPE OF THE REQUEST FOR PROPOSAL

The State of Nebraska, Administrative Services (AS), Materiel Division, Purchasing Bureau (hereafter known as State Purchasing Bureau), is issuing this Request for Proposal, RFP Number 5495 Z1 for the purpose of selecting a qualified Contractor to provide High speed transport services for participants of Network Nebraska-Education. Any resulting contract is not an exclusive contract to furnish the services provided for in this Request for Proposal, and does not preclude the purchase of similar services from other sources.

A contract resulting from this Request for Proposal will be issued from the date of award through June 30, 2020. The contract has the option to renew for three (3) additional one (1) year periods as mutually agreed upon by all parties. The State reserves the right to extend the period of this contract beyond the termination date when mutually agreeable to the Contractor and the State of Nebraska.

Spectrum understands. Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**ALL INFORMATION PERTINENT TO THIS REQUEST FOR PROPOSAL CAN BE FOUND ON THE INTERNET AT:**  
<http://das.nebraska.gov/materiel/purchasing.html>

### A. SCHEDULE OF EVENTS

The State expects to adhere to the tentative procurement schedule shown below. It should be noted, however, that some dates are approximate and subject to change.

ACTIVITY		DATE/TIME
1.	Release Request for Proposal	December 20, 2016
2.	Last day to submit written questions	December 30, 2016
3.	State responds to written questions through Request for Proposal "Addendum" and/or "Amendment" to be posted to the Internet at: <a href="http://das.nebraska.gov/materiel/purchasing.html">http://das.nebraska.gov/materiel/purchasing.html</a>	January 4, 2017
4.	Last day to submit "Letter of Intent To Bid and Acceptance or Exceptions to Section III Terms and Conditions and provision of Service Level Agreement (SLA)"	January 6, 2017
5.	Proposal Opening Location: State Purchasing Bureau 1526 K Street, Suite 130 Lincoln, NE 68508	January 19, 2017 2:00 PM Central Time
6.	Review for conformance of mandatory requirements	January 19, 2017
7.	Evaluation period	January 20, 2017 – January 24, 2017
8.	Post "Letter of Intent to Contract" to Internet at: <a href="http://das.nebraska.gov/materiel/purchasing.html">http://das.nebraska.gov/materiel/purchasing.html</a>	January 26, 2017
9.	Contract finalization period	January 26, 2017 – February 9, 2017
10.	Contract award	February 16, 2017
11.	Contractor start date	February 16, 2017

Spectrum understands.

## **II. PROCUREMENT PROCEDURES**

### **A. PROCURING OFFICE AND CONTACT PERSON**

Procurement responsibilities related to this Request for Proposal reside with the State Purchasing Bureau. The point of contact for the procurement is as follows:

Name: Robert Thompson / Michelle Thompson  
Agency: State Purchasing Bureau  
Address: 1526 K Street, Suite 130  
Lincoln, NE 68508

Telephone: 402-471-6500  
Facsimile: 402-471-2089  
E-Mail: [as.materielpurchasing@nebraska.gov](mailto:as.materielpurchasing@nebraska.gov)

Spectrum understands.

### **B. GENERAL INFORMATION**

The Request for Proposal is designed to solicit proposals from qualified vendors who will be responsible for providing High speed transport services for participants of Network Nebraska-Education at a competitive and reasonable cost. Proposals that do not conform to the mandatory items as indicated in the Request for Proposal will not be considered.

Proposals shall conform to all instructions, conditions, and requirements included in the Request for Proposal. Prospective bidders are expected to carefully examine all documentation, schedules, and requirements stipulated in this Request for Proposal, and respond to each requirement in the format prescribed.

A fixed-price contract will be awarded as a result of this proposal. In addition to the provisions of this Request for Proposal and the awarded proposal, which shall be incorporated by reference in the contract, any additional clauses or provisions required by the terms and conditions will be included as an amendment to the contract.

Spectrum understands has and will comply.

### **C. CUSTOMER SERVICE**

In addition to any specified service requirements contained in this agreement, the Contractor agrees and understands that satisfactory customer service is required. Contractor will develop or provide technology and business procedures designed to enhance the level of customer satisfaction and to provide the customer appropriate information given their situation. Contractor, its employees, Subcontractors, and agents must be accountable, responsive, reliable, patient, and have well-developed communication skills as set forth by the customer service industry's best practices and processes.

Spectrum understands and will comply.

### **D. COMMUNICATION WITH STATE STAFF AND EVALUATORS**

From the date the Request for Proposal is issued until a determination is announced regarding the selection of the Contractor, contact regarding this project between potential Contractors and individuals employed by the State is restricted to only written communication with the staff designated above as the point of contact for this Request for Proposal. Bidders shall not have any communication with, or attempt to communicate with or influence in any way, any evaluator involved in this RFP.

Once a Contractor is preliminarily selected, as documented in the intent to contract, that Contractor is restricted from communicating with State staff until a contract is signed. Violation of this condition may be considered sufficient cause to reject a Contractor's proposal and/or selection irrespective of any other condition.

The following exceptions to these restrictions are permitted:

1. Written communication with the person(s) designated as the point(s) of contact for this Request for Proposal or procurement;
2. Contacts made pursuant to any pre-existing contracts or obligations; and
3. State-requested presentations, key personnel interviews, clarification sessions or discussions to finalize a contract.

Violations of these conditions may be considered sufficient cause to reject a bidder's proposal and/or selection irrespective of any other condition. No individual member of the State, employee of the State, or member of the Evaluation Committee is empowered to make binding statements regarding this Request for Proposal. The buyer will issue any clarifications or opinions regarding this Request for Proposal in writing.

Spectrum understands and will comply.

**E. NOTIFICATION OF INTENT TO BID AND ACCEPTANCE OR EXCEPTIONS TO SECTION III TERMS AND CONDITIONS AND PROVISIONS OF SERVICE LEVEL AGREEMENT (SLA)**

Bidders should hand deliver, return by facsimile, e-mail or delivery by US mail the "Notification of Intent to Bid and Acceptance or Exceptions to Section III Terms and Conditions and provisions of SLA" that accompanies this document (see Form B) to the contact person shown on the cover page of the Request For Proposal Form. This form should be filled out in its entirety and returned no later than the date shown in the Schedule of Events.

It is preferred that Form B, Notification of Intent To Bid and Acceptance or Exceptions to Section III Terms and Conditions and provisions of SLA, be sent via e-mail to [as.materielpurchasing@nebraska.gov](mailto:as.materielpurchasing@nebraska.gov), but may be hand delivered, sent via facsimile to 402-471-2089 or delivery by US mail.

A list of vendors who submitted a Notification of Intent to Bid and Acceptance or Exceptions to Section III Terms and Conditions and provisions of SLA will be provided through an addendum to be posted on the Internet at <http://das.nebraska.gov/materiel/purchasing.html> on or after the date shown in the Schedule of Events.

Spectrum understands and has complied.

**F. WRITTEN QUESTIONS AND ANSWERS**

Any explanation desired by a bidder regarding the meaning or interpretation of any Request for Proposal provision must be submitted in writing to the State Purchasing Bureau and clearly marked "RFP Number 5495 Z1; Network Nebraska-Education Questions". It is preferred that questions be sent via e-mail to [as.materielpurchasing@nebraska.gov](mailto:as.materielpurchasing@nebraska.gov). Questions may also be sent by facsimile to 402-471-2089, but must include a cover sheet clearly indicating that the transmission is to the attention of Robert Thompson / Michelle Thompson, showing the total number of pages transmitted, and clearly marked "RFP Number 5495 Z1; Network Nebraska-Education Questions".

It is recommended that Bidders submit questions sequentially numbered, include the RFP reference and page number using the following format.

Question Number	RFP Section Reference	RFP Page Number	Question

Written answers will be provided through an addendum to be posted on the Internet at <http://das.nebraska.gov/materiel/purchasing.html> on or before the date shown in the Schedule of Events.

Spectrum understands and has complied.

**G. SUBMISSION OF PROPOSALS**

The following describes the requirements related to proposal submission, proposal handling, and review by the State.

To facilitate the proposal evaluation process, one (1) original of the entire proposal should be submitted. Proposals must be submitted by the proposal due date and time. **A separate sheet must be provided that clearly states which sections have been submitted as proprietary or have copyrighted materials.** All proprietary information the bidder wishes the State to withhold must be submitted in accordance with the instructions outlined in Section III, Proprietary Information. Proposal responses should include the completed Form A, Bidder Contact Sheet. Proposals must reference the Request for Proposal number and be sent to the specified address. Container(s) utilized for original documents should be clearly marked "ORIGINAL DOCUMENTS". Please note that the address label should appear as specified in Section II part A on the face of each container or bidder's bid response packet. Rejected late proposals will be returned to the bidder unopened, if requested, at bidder's expense. If a recipient phone number is required for delivery purposes, 402-471-6500 should be used. The Request for Proposal number must be included in all correspondence.

Emphasis should be concentrated on conformance to the Request for Proposal instructions, responsiveness to requirements, completeness and clarity of content. If the bidder's proposal is presented in such a fashion that makes evaluation difficult or overly time consuming, it is likely that the proposal will be rejected.

Spectrum understands and has complied.

**H. PROPOSAL OPENING**

The sealed proposals will be publicly opened and the bidding entities announced on the date, time, and location shown in the Schedule of Events. Proposals will be available for viewing by those present at the proposal opening. Vendors may also contact the State to schedule an appointment for viewing proposals after the Intent to Award has been posted to the website.

Spectrum understands and request that any portion of this response properly labelled and marked "Confidential and Proprietary" be withheld from the public opening.

Spectrum understands and requests that any portion of this response properly labeled and marked "Confidential and Proprietary" be withheld from the public opening.

**I. LATE PROPOSALS**

Proposals received after the time and date of the proposal opening will be considered late proposals. Rejected late proposals will be returned to the bidder unopened, if requested, at bidder's expense. The State is not responsible for proposals that are late or lost due to mail service inadequacies, traffic, or any other reason(s).

Spectrum understands.

**J. REJECTION OF PROPOSALS**

The State reserves the right to reject any or all proposals, wholly or in part, or to award to multiple bidders in whole or in part. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the proposal and do not improve the bidder's competitive position. All awards will be made in a manner deemed in the best interest of the State.

This proposal assumes a certain minimum level of acceptance of our bid. Therefore, in the event only a portion of Spectrum's proposal is accepted, our offer may be affected, and thus, Spectrum requests to review any such partial acceptance before final acceptance.

**K. MANDATORY REQUIREMENTS**

The proposals will first be examined to determine if all mandatory requirements listed below have been addressed to warrant further evaluation. Proposals not meeting mandatory requirements will be excluded from further evaluation. The mandatory requirement items are as follows:

1. Request For Proposal For Contractual Services form, signed in ink;
2. Completed Section III;
3. Cost Proposal (Appendix A).

**Neb. Rev. Stat. §73-107 allows for a preference for a resident disabled veteran or business located in a designated enterprise zone.** When a state contract is to be awarded to the lowest responsible bidder, a resident disabled veteran or a business located in a designated enterprise zone under the Enterprise Zone Act shall be allowed a preference over any other resident or nonresident bidder, if all other factors are equal.

**Resident disabled veterans means any person (a) who resides in the State of Nebraska, who served in the United States Armed Forces, including any reserve component or the National Guard, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), and who possesses a disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense and (b)(i) who owns and controls a business or, in the case of a publicly owned business, more than fifty percent of the stock is owned by one or more persons described in subdivision (a) of this subsection and (ii) the management and daily business operations of the business are controlled by one or more persons described in subdivision (a) of this subsection. Any contract entered into without compliance with this section shall be null and void.**

Therefore, if a resident disabled veteran or business located in a designated enterprise zone submits a bid in accordance with Neb. Rev. Stat. §73-107 and has so indicated on the RFP cover page under "Bidder must complete the following" requesting priority/preference to be considered in the award of this contract, the following will need to be submitted by the vendor within ten (10) business days of request:

1. Documentation from the United States Armed Forces confirming service;
2. Documentation of discharge or otherwise separated characterization of honorable or general (under honorable conditions);
3. Disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense; and
4. Documentation which shows ownership and control of a business or, in the case of a publicly owned business, more than fifty percent of the stock is owned by one or more persons described in subdivision (a) of this subsection; and the management and daily business operations of the business are controlled by one or more persons described in subdivision (a) of this subsection.

Failure to submit the requested documentation within ten (10) business days of notice will disqualify the bidder from consideration of the preference.

Spectrum understands and has complied.

**L. REFERENCE CHECKS**

The State reserves the right to check any reference(s), regardless of the source of the reference information, including but not limited to, those that are identified by the company in the proposal, those indicated through the explicitly specified contacts, those that are identified during the review of the proposal, or those that result from communication with other entities involved with similar projects. The State may use a third-party to conduct reference checks.

Information to be requested and evaluated from references may include, but is not limited to, some or all of the following: financial stability of the company, project description and background, job performed, functional and technical abilities, communication skills and timeliness, cost and schedule estimates and accuracy, problems (poor quality deliverables, contract disputes, work stoppages, et cetera), overall performance, and whether or not the reference would rehire the firm or individual. Only top scoring bidders may receive reference checks, and negative references may eliminate bidders from consideration for award.

Spectrum understands.

**M. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS**

All bidders should be authorized to transact business in the State of Nebraska. All bidders are expected to comply with all Nebraska Secretary of State Registration requirements. It is the responsibility of the bidder to comply with any registration requirements pertaining to types of business entities (e.g. person, partnership, foreign or domestic limited liability company, association, or foreign or domestic corporation or other type of business entity). The bidder who is the recipient of an Intent to Award will be required to certify that it has so complied and produce a true and exact copy of its current (within (90) calendar days), valid Certificate of Good Standing or Letter of Good Standing; or in the case of a sole proprietorship, provide written documentation of sole proprietorship. This must be accomplished prior to the award of the contract. Construction Contractors are expected to meet all applicable requirements of the Nebraska Contractor Registration Act and provide a current, valid certificate of registration. Further, all bidders shall comply with



any and all other applicable Nebraska statutes regarding transacting business in the State of Nebraska. Bidders should submit the above certification(s) with their bid.

If a bank is registered with the Office of Comptroller of Currency, it is not required to register with the State. However, the Office of Comptroller of Currency does have a certificate of good standing/registration. The bank could provide that for verification. (Optional)

Spectrum understands.

**N. VIOLATION OF TERMS AND CONDITIONS**

Violation of the terms and conditions contained in this Request for Proposal or any resultant contract, at any time before or after the award, shall be grounds for action by the State which may include, but is not limited to, the following:

1. Rejection of a bidder's proposal;
2. Withdrawal of the Intent to Award
3. Termination of the resulting contract.
4. Legal action.
5. Suspension of the bidder from further bidding with the State for the period of time relative to the seriousness of the violation, such period to be within the sole discretion of the State.

Spectrum understands. Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

### III. TERMS AND CONDITIONS

By signing the "Request for Proposal for Contractual Services" form, the bidder guarantees compliance with the provisions stated in this Request for Proposal, agrees to the Terms and Conditions unless otherwise agreed to and certifies bidder maintains a drug free work place environment.

Bidders are expected to closely read the Terms and Conditions and provide a binding signature of intent to comply with the Terms and Conditions; provided, however, a bidder may indicate any exceptions to the Terms and Conditions by (1) clearly identifying the term or condition by subsection, and (2) including an explanation for the bidder's inability to comply with such term or condition which includes a statement recommending terms and conditions the bidder would find acceptable. Rejection in whole or in part of the Terms and Conditions may be cause for rejection of a bidder's proposal. **Bidders must include completed Section III with their proposal response.**

The State of Nebraska is soliciting bids in response to the RFP. The State of Nebraska will not consider proposals that propose the substitution of the bidder's contract, agreements, or terms for those of the State of Nebraska's. Any License, Service Agreement, Customer Agreement, User Agreement, Bidder Terms and Conditions, Document, or Clause purported or offered to be included as a part of this RFP must be submitted as individual clauses, as either a counter-offer or additional language, and each clause must be acknowledged and accepted in writing by the State. If the Bidder's clause is later found to be in conflict with the RFP or resulting contract the Bidder's clause shall be subordinate to the RFP or resulting contract.

Spectrum understands. Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

#### A. GENERAL

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
x APC				Contract 70988 O4

The contract resulting from this Request for Proposal shall incorporate the following documents:

1. Amendment to Contract Award with the most recent dated amendment having the highest priority;
2. Contract Award and any attached Addenda;
3. The Request for Proposal form and the Contractor's Proposal, signed in ink;
4. Amendments to RFP and any Questions and Answers; and
5. The original RFP document and any Addenda.

These documents constitute the entirety of the contract.

Unless otherwise specifically stated in a contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendment to Contract Award with the most recent dated amendment having the highest priority, 2) Contract Award and any attached Addenda, 3) the signed Request for Proposal form and the Contractor's Proposal, 4) Amendments to RFP and any Questions and Answers, 5) the original RFP document and any Addenda.

Any ambiguity in any provision of this contract which shall be discovered after its execution shall be resolved in accordance with the rules of contract interpretation as established in the State of Nebraska.

Once proposals are opened they become the property of the State of Nebraska and will not be returned.

Spectrum understands and will comply.

**B. AWARD**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			x ATC	Contract 70988 O4

All purchases, leases, or contracts which are based on competitive proposals will be awarded according to the provisions in the Request for Proposal. The State reserves the right to reject any or all proposals, wholly or in part, or to award to multiple bidders in whole or in part, and at its discretion, may withdraw or amend the Request for Proposal at any time. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the proposal, and do not improve the bidder's competitive position. All awards will be made in a manner deemed in the best interest of the State. The Request for Proposal does not commit the State to award a contract. If, in the opinion of the State, revisions or amendments will require substantive changes in proposals, the due date may be extended.

By submitting a proposal in response to this Request for Proposal, the bidder grants to the State the right to contact or arrange a visit in person with any or all of the bidder's clients.

Once intent to award decision has been determined, it will be posted to the Internet at: <http://das.nebraska.gov/materiel/purchasing.html>

Grievance and protest procedure is available on the Internet at:  
[http://das.nebraska.gov/materiel/purchase\\_bureau/docs/vendors/protest/ProtestGrievanceProcedureForVendors.pdf](http://das.nebraska.gov/materiel/purchase_bureau/docs/vendors/protest/ProtestGrievanceProcedureForVendors.pdf)

Any protests must be filed by a vendor within ten (10) business days after the intent to award decision is posted to the Internet.

This proposal assumes a certain minimum level of acceptance of our bid. Therefore, in the event only a portion of Spectrum's proposal is accepted, our offer may be affected, and thus, Spectrum requests to review any such partial acceptance before final acceptance.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
x ATC				Contract 70988 O4

The Contractor shall comply with all applicable local, state and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Contractors of the State of Nebraska, and their Subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensation, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §48-1101 to 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be

regarded as a material breach of contract. The Contractor shall insert a similar provision in all Subcontracts for services to be covered by any contract resulting from this Request for Proposal.

Spectrum understands and will comply.

**D. PERMITS, REGULATIONS, LAWS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
x ATC				Contract 70988 O4

The Contractor shall procure and pay for all permits, licenses and approvals necessary for the execution of the contract. The Contractor shall comply with all applicable local, state, and federal laws, ordinances, rules, orders, and regulations.

Spectrum understands and will comply.

**E. OWNERSHIP OF INFORMATION AND DATA**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			x STC	Contract 70988 O4

The State of Nebraska shall have the unlimited right to publish, duplicate, use, and disclose all information and data developed or derived by the Contractor pursuant to the contract.

The Contractor must guarantee that it has the full legal right to the materials, supplies, equipment, and other rights or titles (e.g. rights to licenses transfer or assign deliverables) necessary to execute the contract. The contract price shall, without exception, include compensation for all royalties and costs arising from patents, trademarks, and copyrights that are in any way involved in the contract. It shall be the responsibility of the Contractor to pay for all royalties and costs, and the State must be held harmless from any such claims.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**E. INSURANCE REQUIREMENTS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			x STC	Contract 70988 O4

The Contractor shall not commence work under this contract until all the insurance required hereunder has been obtained and such insurance has been approved by the State. The Contractor shall maintain all required insurance for the life of this contract and shall ensure that the State Purchasing Bureau has the most current certificate of insurance throughout the life of this contract. If Contractor will be utilizing any Subcontractors, the Contractor is responsible for obtaining the certificate(s) of insurance required herein under from any and all Subcontractor(s). The

Contractor is also responsible for ensuring Subcontractor(s) maintain the insurance required until completion of the contract requirements. The Contractor shall not allow any Subcontractor to commence work on any subcontract until all similar insurance required of the Subcontractor has been obtained and approved by the Contractor. Approval of the insurance by the State shall not limit, relieve, or decrease the liability of the Contractor hereunder.

If by the terms of any insurance a mandatory deductible is required, or if the Contractor elects to increase the mandatory deductible amount, the Contractor shall be responsible for payment of the amount of the deductible in the event of a paid claim.

Insurance coverages shall function independent of all other clauses in the contract, and in no instance shall the limits of recovery from the insurance be reduced below the limits required by this paragraph.

### 1. WORKERS' COMPENSATION INSURANCE

The Contractor shall take out and maintain during the life of the contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the contractors' employees to be engaged in work on the project under the contract and, in case any such work is sublet, the Contractor shall require the Subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. This policy shall include a waiver of subrogation in favor of the State. The amounts of such insurance shall not be less than the limits stated hereinafter.

### 2. COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE

The Contractor shall take out and maintain during the life of the contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect Contractor and any Subcontractor performing work covered by the contract from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under the contract, whether such operation be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

The Commercial General Liability Insurance shall be written on an occurrence basis, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury and Contractual Liability coverage. The policy shall include the State, and others as required by the contract documents, as Additional Insured(s). This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered excess and non-contributory. The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned and Hired vehicles.

### 3. INSURANCE COVERAGE AMOUNTS REQUIRED

COMMERCIAL GENERAL LIABILITY	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Fire Damage	\$50,000 any one fire
Medical Payments	\$10,000 any one person
Damage to Rented Premises	\$300,000 each occurrence
Contractual	Included
XCU Liability (Explosion, Collapse, and Underground Damage)	Included
Independent Contractors	Included
Abuse & Molestation	Included
<i>If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.</i>	
WORKER'S COMPENSATION	
Employers Liability Limits	\$500K/\$500K/\$500K
Statutory Limits- All States	Statutory - State of Nebraska
USL&H Endorsement	Statutory
Voluntary Compensation	Statutory
COMMERCIAL AUTOMOBILE LIABILITY	

Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability	Included
Motor Carrier Act Endorsement	Where Applicable
<b>UMBRELLA/EXCESS LIABILITY</b>	
Over Primary Insurance	\$5,000,000
<b>SUBROGATION WAIVER</b>	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."	
<b>LIABILITY WAIVER</b>	
"Commercial General Liability & Commercial Automobile Liability policies shall be primary and any insurance or self-insurance carried by the State shall be considered excess and non-contributory as an Additional Insured."	

**4. EVIDENCE OF COVERAGE**

The Contractor should furnish the State, with their proposal response, a certificate of insurance coverage complying with the above requirements to the attention of the Buyer at 402-471-2089 (fax)

Administrative Services State  
Purchasing Bureau 1526 K Street,  
Suite 130 Lincoln, NE 68508

These certificates or the cover sheet shall reference the RFP number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration, and amounts and types of coverage afforded. If the State is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.

Notice of cancellation of any required insurance policy must be submitted to Administrative Services State Purchasing Bureau when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

Spectrum understands and has included a copy of its Certificate of Insurance for the State's review on page XX.

**G. COOPERATION WITH OTHER CONTRACTORS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			x ANC	Contract 70988 O4

The State may already have in place or choose to award supplemental contracts for work related to this Request for Proposal, or any portion thereof.

1. The State reserves the right to award the contract jointly between two or more potential Contractors, if such an arrangement is in the best interest of the State.
2. The Contractor shall agree to cooperate with such other Contractors, and shall not commit or permit any act which may interfere with the performance of work by any other Contractor.

Spectrum understands and will comply.

This proposal assumes a certain minimum level of acceptance of our bid. Therefore, in the event only a portion of Spectrum's proposal is accepted, our offer may be affected, and thus, Spectrum requests to review any such partial acceptance before final acceptance.



Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**H. INDEPENDENT CONTRACTOR**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			<sup>x</sup> ATC	Contract 70988 O4

It is agreed that nothing contained herein is intended or should be construed in any manner as creating or establishing the relationship of partners between the parties hereto. The Contractor represents that it has, or will secure at its own expense, all personnel required to perform the services under the contract. The Contractor's employees and other persons engaged in work or services required by the Contractor under the contract shall have no contractual relationship with the State; they shall not be considered employees of the State.

All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination against the Contractor, its officers, or its agents) shall in no way be the responsibility of the State. The Contractor will hold the State harmless from any and all such claims. Such personnel or other persons shall not require nor be entitled to any compensation, rights, or benefits from the State including without limit, tenure rights, medical and hospital care, sick and vacation leave, severance pay or retirement benefits.

Spectrum understands and will comply.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response..

**I. CONTRACTOR RESPONSIBILITY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			<sup>x</sup> ATC	Contract 70988 O4

The Contractor is solely responsible for fulfilling the contract, with responsibility for all services offered and products to be delivered as stated in the Request for Proposal, the Contractor's proposal, and the resulting contract. The Contractor shall be the sole point of contact regarding all contractual matters.

If the Contractor intends to utilize any Subcontractor's services, the Subcontractor's level of effort, tasks, and time allocation must be clearly defined in the Contractor's proposal. The Contractor shall agree that it will not utilize any Subcontractors not specifically included in its proposal in the performance of the contract without the prior written authorization of the State. Following execution of the contract, the Contractor shall proceed diligently with all services and shall perform such services with qualified personnel in accordance with the contract.

Spectrum understands and will comply.

Spectrum understands and agrees it will be responsible for completely supervising and directing the work under the Agreement all Spectrum employees, contractors or agents will use their best skill and attention.



Contracts and/or agents under contract with Spectrum to perform work under the Agreement will be responsible to Spectrum. Spectrum agrees it shall have responsibility for the acts and/or omissions of its employees, contractors, and agents.

Spectrum will be responsible for condition of the job site used by Spectrum and its agents or contractors to the extent caused by Spectrum or its agents or contractors.

Spectrum and its contractors and agents shall be responsible for safety of persons performing work under contract with Spectrum in fulfillment of this Agreement to the extent that any safety issues are not caused by the acts or omissions of the State.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**J. CONTRACTOR PERSONNEL**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			X A7C	Contract 70988 O4

The Contractor warrants that all persons assigned to the project shall be employees of the Contractor or specified Subcontractors, and shall be fully qualified to perform the work required herein. Personnel employed by the Contractor to fulfill the terms of the contract shall remain under the sole direction and control of the Contractor. The Contractor shall include a similar provision in any contract with any Subcontractor selected to perform work on the project.

Personnel commitments made in the Contractor's proposal shall not be changed without the prior written approval of the State. Replacement of key personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

The State reserves the right to require the Contractor to reassign or remove from the project any Contractor or Subcontractor employee.

In respect to its employees, the Contractor agrees to be responsible for the following:

1. any and all employment taxes and/or other payroll withholding;
2. any and all vehicles used by the Contractor's employees, including all insurance required by state law;
3. damages incurred by the Contractor's employees within the scope of their duties under the contract;
4. maintaining workers' compensation and health insurance and submitting any reports on such insurance to the extent required by governing State law; and
5. determining the hours to be worked and the duties to be performed by the Contractor's employees.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**K. CONTRACT CONFLICTS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			x ATC	Contract 70988 O4

Contractor shall insure that contracts or agreements with sub-contractors and agents, and the performance of services in relation to this contract by sub-contractors and agents, does not conflict with this contract.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**L. STATE OF NEBRASKA PERSONNEL RECRUITMENT PROHIBITION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
x ATC				Contract 70988 O4

The Contractor shall not, at any time, recruit or employ any State employee or agent who has worked on the Request for Proposal or project, or who had any influence on decisions affecting the Request for Proposal or project.

Spectrum understands.

**M. CONFLICT OF INTEREST**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
x ATC				Contract 70988 O4

By submitting a proposal, bidder certifies that there does not now exist any relationship between the bidder and any person or entity which is or gives the appearance of a conflict of interest related to this Request for Proposal or project.

The bidder certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder or which creates an actual or appearance of conflict of interest.

The bidder certifies that it will not employ any individual known by bidder to have a conflict of interest.

Spectrum understands and will comply.

**N. PROPOSAL PREPARATION COSTS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
x ATC				Contract 70988 04

The State shall not incur any liability for any costs incurred by bidders in replying to this Request for Proposal, or in any other activity related to bidding on this Request for Proposal.

Spectrum understands.

**O. ERRORS AND OMISSIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
x ATC				Contract 70988 04

The bidder shall not take advantage of any errors and/or omissions in this Request for Proposal or resulting contract. The bidder must promptly notify the State of any errors and/or omissions that are discovered.

Spectrum understands and will comply.

**P. BEGINNING OF WORK**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
x ATC				Contract 70988 04

The bidder shall not commence any billable work until a valid contract has been fully executed by the State and the successful Contractor. The Contractor will be notified in writing when work may begin.

Spectrum understands.

**Q. ASSIGNMENT BY THE STATE**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			x ATC	Contract 70988 04



The State shall have the right to assign or transfer the contract or any of its interests herein to any agency, board, commission, or political subdivision of the State of Nebraska. There shall be no charge to the State for any assignment hereunder.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**R. ASSIGNMENT BY THE CONTRACTOR**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			<sup>x</sup> ATC	Contract 70988 O4

The Contractor may not assign, voluntarily or involuntarily, the contract or any of its rights or obligations hereunder (including without limitation rights and duties of performance) to any third party, without the prior written consent of the State, which will not be unreasonably withheld.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**S. DEVIATIONS FROM THE REQUEST FOR PROPOSAL**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			<sup>x</sup> ATC	Contract 70988 O4

The requirements contained in the Request for Proposal become a part of the terms and conditions of the contract resulting from this Request for Proposal. Any deviations from the Request for Proposal must be clearly defined by the bidder in its proposal and, if accepted by the State, will become part of the contract. Any specifically defined deviations must not be in conflict with the basic nature of the Request for Proposal, mandatory requirements, or applicable state or federal laws or statutes. "Deviation", for the purposes of this RFP, means any proposed changes or alterations to either the contractual language or deliverables within the scope of this RFP. The State discourages deviations and reserves the right to reject proposed deviations.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**T. GOVERNING LAW**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			x A7C	Contract 70988 O4

The contract shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the State of Nebraska regarding this Request for Proposal or any resultant contract shall be brought in the State of Nebraska administrative or judicial forums as defined by State law. The Contractor must be in compliance with all Nebraska statutory and regulatory law.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**U. ATTORNEY'S FEES**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
x A7C				Contract 70988 O4

In the event of any litigation, appeal, or other legal action to enforce any provision of the contract, the Contractor agrees to pay all expenses of such action, as permitted by law, including attorney's fees and costs, if the State is the prevailing party.

In the event of any litigation, appeal or other Legal action to enforce any provision of the contract, Spectrum agrees to pay all expenses of such action, as permitted by law, including attorney's fees if the State is the prevailing party.

**V. ADVERTISING**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
x A7C				Contract 70988 O4

The Contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its services are endorsed or preferred by the State. News releases pertaining to the project shall not be issued without prior written approval from the State.

Spectrum understands and will comply.

**W. STATE PROPERTY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
x ATC				Contract 70988 O4

The Contractor shall be responsible for the proper care and custody of any State-owned property which is furnished for the Contractor's use during the performance of the contract. The Contractor shall reimburse the State for any loss or damage of such property; normal wear and tear is expected.

Spectrum agrees it is liable for physical damage to personal or real property caused by the negligent or willful misconduct of Spectrum, its employees or contractors, at the Site(s) during the installation or maintenance of the Equipment. Spectrum shall be responsible for reasonable restoration efforts necessary to address any displacement resulting from excavation.

**X. SITE RULES AND REGULATIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			x ATC	Contract 70988 O4

The Contractor shall use its best efforts to ensure that its employees, agents, and Subcontractors comply with site rules and regulations while on State premises. If the Contractor must perform on-site work outside of the daily operational hours set forth by the State, it must make arrangements with the State to ensure access to the facility and the equipment has been arranged. No additional payment will be made by the State on the basis of lack of access, unless the State fails to provide access as agreed to between the State and the Contractor.

Spectrum understands. In the event of service degradation/interruption where site access is required for repair / maintenance, Spectrum will not be held responsible for delays in facility access due to State request for said access.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**Y. NOTIFICATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
x ATC				Contract 70988 O4

During the bid process, all communication between the State and a bidder shall be between the bidder's representative clearly noted in its proposal and the buyer noted in Section II. A., Procuring Office and Contact Person, of this RFP. After the award of the contract, all notices under the contract shall be deemed duly given upon delivery to the staff designated as the point of contact for this Request for Proposal, in person, or upon delivery by



U.S. Mail, facsimile, or e-mail. Each bidder should provide in its proposal the name, title, and complete address of its designee to receive notices.

1. Except as otherwise expressly specified herein, all notices, requests, or other communications shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth above, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or three (3) calendar days following deposit in the mail.
2. Whenever the Contractor encounters any difficulty which is delaying or threatens to delay its timely performance under the contract, the Contractor shall immediately give notice thereof in writing to the State reciting all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by the State of any of its rights or remedies to which it is entitled by law or equity or pursuant to the provisions of the contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay.

Either party may change its address for notification purposes by giving notice of the change, and setting forth the new address and an effective date.

For the duration of the contract, all communication between Contractor and the State regarding the contract shall take place between the Contractor and individuals specified by the State in writing. Communication about the contract between Contractor and individuals not designated as points of contact by the State is strictly forbidden.

Pre Award

Ms. Sandra Gilsdorf  
Major Account Executive  
Lincoln, NE 68506  
(402) 421-0396  
[Sandra.Gilsdorf@Charter.com](mailto:Sandra.Gilsdorf@Charter.com)

Post Award

Morgan Collins  
Strategic Account Manager  
Ballwin, MO 63131  
(314) 858-3596  
[Morgan.Collins@Charter.com](mailto:Morgan.Collins@Charter.com)

**Z. EARLY TERMINATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			x ATC	Contract 70988 O4

The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract at any time.
2. The State, in its sole discretion, may terminate the contract for any reason upon thirty (30) calendar day's written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the contract. In the event of termination the Contractor

shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.

3. The State may terminate the contract immediately for the following reasons:
- a. if directed to do so by statute;
  - b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
  - c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
  - d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;
  - e. an involuntary proceeding has been commenced by any party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;
  - f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
  - g. Contractor intentionally discloses confidential information;
  - h. Contractor has or announces it will discontinue support of the deliverable;
  - i. second or subsequent documented "vendor performance report" form deemed acceptable by the State Purchasing Bureau; or
  - j. Contractor engaged in collusion or actions which could have provided Contractor an unfair advantage in obtaining this contract.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**AA. FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			x ATC	Contract 70988 O4

The State may terminate the contract, in whole or in part, in the event funding is no longer available. The State's obligation to pay amounts due for fiscal years following the current fiscal year is contingent upon legislative appropriation of funds for the contract. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal years for which such funds are not appropriated. The State will give the Contractor written notice thirty (30) calendar days prior to the effective date of any termination, and advise the Contractor of the location (address and room number) of any related equipment. All obligations of the State to make payments after the termination date will cease and all interest of the State in any related equipment will terminate. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**BB. BREACH BY CONTRACTOR**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			<sup>x</sup> ATC	Contract 70988 O4

The State may terminate the contract, in whole or in part, if the contractor fails to perform its obligations under the contract in a timely and proper manner. The State may, by providing a written notice of default to the Contractor, allow the Contractor to cure a failure or breach of contract within a period of thirty (30) calendar days (or longer at State's discretion considering the gravity and nature of the default). Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing the Contractor time to cure a failure or breach of contract does not waive the State's right to immediately terminate the contract for the same or different contract breach which may occur at a different time. In case of default of the Contractor, the State may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**CC. ASSURANCES BEFORE BREACH**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
<sup>x</sup> ATC				Contract 70988 O4

If any document or deliverable required pursuant to the contract does not fulfill the requirements of the Request for Proposal/resulting contract, upon written notice from the State, the Contractor shall deliver assurances in the form of additional Contractor resources at no additional cost to the project in order to complete the deliverable, and to ensure that other project schedules will not be adversely affected.

Spectrum understands.

**DD. ADMINISTRATION – CONTRACT TERMINATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
<sup>x</sup> ATC				Contract 70988 O4

- Contractor must provide confirmation that upon contract termination all deliverables prepared in accordance with this agreement shall become the property of the State of Nebraska subject to the ownership provision (section E) contained herein, and is provided to the State of Nebraska at no additional cost to the State.


Spectrum understands and agrees that all Equipment and materials installed or provided by Spectrum are and shall always remain the property of Spectrum, shall not become a

fixture to the Premises, and must be returned to Spectrum at any time Services are disconnected in the condition in which they were received subject to ordinary wear and tear.

2. Contractor must provide confirmation that in the event of contract termination, all records that are the property of the State will be returned to the State within thirty (30) calendar days. Notwithstanding the above, Contractor may retain one copy of any information as required to comply with applicable work product documentation standards or as are automatically retained in the course of Contractor's routine back up procedures.

Spectrum understands and will comply.

**EE. LIQUIDATED DAMAGES**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
				Contract 70988 04

If the Contractor fails to perform any substantial obligation under the contract, the State may withhold all monies due and payable to the Contractor, without penalty, until such failure is cured or otherwise adjudicated. Failure to meet the dates for the deliverables as agreed upon by the parties may result in an assessment of liquidated damages equal to the difference between newly contracted monthly costs and the cost of the circuit or service being replaced, if incurred, until the deliverables are approved.

The contract expectation is for a service that, at a minimum, will meet or exceed required specifications 99.5% of the month equivalent to a maximum of 3.6 total hours of downtime/service non-compliance per month. Any service not meeting contract specifications to include violation of QoS parameters will incur a contract performance penalty per the following formula:

For every hour and fraction of an hour of service violation exceeding the identified 99.5% uptime requirement, the customer will be refunded one day of service credit. Repeated violations of service performance agreements during any single calendar day will be considered a continuous event from the beginning of the original violation until the last violation. Violations on consecutive days will be considered continuous from the initial violation until the service has been restored. The service will be considered restored when no violation has occurred for 24 continuous hours (the 24-hour validation period is not considered part of the damages). Damages duration will round up to the next whole hour.

Example: Intermittent connectivity from 9:15am-2:20pm on the same day; Duration of the actual service violation would be 5 hours and 5 minutes. Violation assessment is rounded up to the next whole hour, so the duration would be considered as 6 total hours of downtime if no previous downtime had been experienced for the service in the current month, or up to 6 hours depending on the amount of cumulative violations experienced in the month that exceeds the 99.5% uptime requirement

**Spectrum has provided the Agreement, Contract 70988 04, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.**

**FF. FORCE MAJEURE**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			x ATC	Contract 70988 04

Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the contract due to a natural disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of the contract. The party so affected shall immediately give notice to the other party of the Force Majeure Event. The State may grant relief from performance of the contract if the Contractor is prevented from performance by a Force Majeure Event. The burden of proof for the need for such relief shall rest upon the Contractor. To obtain release based on a Force Majeure Event, the Contractor shall file a written request for such relief with the State Purchasing Bureau. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the contract.

Spectrum has provided the Agreement, Contract 70988 04, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**GG. PROHIBITION AGAINST ADVANCE PAYMENT**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			x ATC	Contract 70988 04

Payments shall not be made until contractual deliverable(s) are received and accepted by the State.

Spectrum has provided the Agreement, Contract 70988 04, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**HH. PAYMENT**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
x ATC				Contract 70988 04

State will render payment to Contractor when the terms and conditions of the contract and specifications have been satisfactorily completed on the part of the Contractor as solely determined by the State. Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §812401 through 81-2408). The State may require the Contractor to accept payment by electronic means such as ACH



deposit. In no event shall the State be responsible or liable to pay for any services provided by the Contractor prior to the Effective Date, and the Contractor hereby waives any claim or cause of action for any such services.

Spectrum understands.

## II. INVOICES

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
x ATC				Contract 70988 04

Invoices for payments must be submitted by the Contractor as described in Section IV., M. Billing with sufficient detail to support payment. Invoices for the high speed transport service will be issued to the entity being served by such services. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

Spectrum understands and will comply.

## JJ. RIGHT TO AUDIT

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
x ATC				Contract 70988 04

Contractor shall establish and maintain a reasonable accounting system that enables the State to readily audit contract. The State and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this contract kept by or under the control of the Contractor, including, but not limited to those kept by the Contractor, its employees, agents, assigns, successors, and Subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

Contractor shall, at all times during the term of this contract and for a period of five (5) years after the completion of this contract, maintain such records, together with such supporting or underlying documents and materials. The Contractor shall at any time requested by the State, whether during or after completion of this contract and at Contractor's own expense make such records available for inspection and audit (including copies and extracts of records as required) by the State. Such records shall be made available to the State during normal business hours at the Contractor's office or place of business. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the State. Contractor shall ensure the State has these rights with Contractor's assigns, successors, and Subcontractors, and the obligations of these rights shall be explicitly included in any Subcontracts or agreements formed between the Contractor and any Subcontractors to the extent that those Subcontracts or agreements relate to fulfillment of the Contractor's obligations to the State.



Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the State unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Contractor to the State in excess of one-half of one percent (.5%) of the total contract billings, the Contractor shall reimburse the State for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the Contractor shall reimburse the State for total costs of audit. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the State's findings to Contractor.

Spectrum understands and will comply. Spectrum maintains, in accordance with generally accepted accounting practices, accurate and complete records including those records that enable Spectrum to support any invoice supplied to Customer.

#### KK. TAXES

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			x AEC	Contract 70988 O4

The State is not required to pay taxes of any kind and assumes no such liability as a result of this solicitation. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

#### LL. INSPECTION AND APPROVAL

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
x AEC				Contract 70988 O4

Final inspection and approval of all work required under the contract shall be performed by the designated State officials. The State and/or its authorized representatives shall have the right to enter any premises where the Contractor or Subcontractor duties under the contract are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

Spectrum understands.

**MM. CHANGES IN SCOPE/CHANGE ORDERS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			x ATC	Contract 70988 O4

The State may, upon the written agreement of Contractor, make changes to the contract within the general scope of the RFP. The State may, at any time work is in progress, by written agreement, make alterations in the terms of work as shown in the specifications, require the Contractor to make corrections, decrease the quantity of work, or make such other changes as the State may find necessary or desirable. The Contractor shall not claim forfeiture of contract by reasons of such changes by the State. Changes in work and the amount of compensation to be paid to the Contractor shall be determined in accordance with applicable unit prices if any, or a pro-rated value.

Corrections of any deliverable, service or performance of work required pursuant to the contract shall not be deemed a modification.

Changes or additions to the contract beyond the scope of the RFP are not permitted.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**NN. SEVERABILITY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			x ATC	Contract 70988 O4

If any term or condition of the contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**OO. CONFIDENTIALITY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			x ATC	Contract 70988 O4

All materials and information provided by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information. All materials and information provided by the State or acquired by the Contractor on behalf of the State shall be handled in accordance with federal and state law, and ethical standards. The Contractor



must ensure the confidentiality of such materials or information. Should said confidentiality be breached by a Contractor, Contractor shall notify the State immediately of said breach and take immediate corrective action.

It is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable to Contractors by 5 U.S.C. 552a (m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

Spectrum understands and will comply.

Customer hereby agrees to keep confidential and not to disclose directly or indirectly to any third party, the terms of this Service Order or any other related Service Orders, except as may be required by Law or for purpose of securing funding for services provided by such Service Order or other obligations set forth herein. If any unauthorized disclosure is made by Customer and/or its agent or representative, Spectrum shall be entitled to, among other damages arising from such unauthorized disclosure, injunctive relief and a penalty payment in the amount of the total One-Time Charges associated with this Service Order, and Spectrum shall have the option of terminating this Service Order, other related Service Orders and/or the Service Agreement. Spectrum shall also keep COMPANY information confidential.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

PP. PROPRIETARY INFORMATION

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			x ATC	Contract 70988 O4

Data contained in the proposal and all documentation provided therein, become the property of the State of Nebraska and the data becomes public information upon opening the proposal. If the bidder wishes to have any information withheld from the public, such information must fall within the definition of proprietary information contained within Nebraska's public record statutes. **All proprietary information the bidder wishes the State to withhold must be submitted in a sealed package, which is separate from the remainder of the proposal, and provide supporting documents showing why such documents should be marked proprietary.** The separate package must be clearly marked PROPRIETARY on the outside of the package. **Bidders may not mark their entire Request for Proposal as proprietary.** Bidder's cost proposals may not be marked as proprietary information. Failure of the bidder to follow the instructions for submitting proprietary and copyrighted information may result in the information being viewed by other bidders and the public. Proprietary information is defined as trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serve no public purpose (see Neb. Rev. Stat. §84-712.05(3)). In accordance with Attorney General Opinions 92068 and 97033, bidders submitting information as proprietary may be required to prove specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive. Although every effort will be made to withhold information that is properly submitted as proprietary and meets the State's definition of proprietary information, the State is under no obligation to maintain the confidentiality of proprietary information and accepts no liability for the release of such information.

Customer hereby agrees to keep confidential and not to disclose directly or indirectly to any third party, the terms of this Service Order or any other related Service Orders, except as may be required by Law or for purpose of securing funding for services provided by such Service Order or other obligations set forth herein. If any unauthorized disclosure is made by Customer and/or its agent or representative, Spectrum shall be entitled to, among other damages arising from such



unauthorized disclosure, injunctive relief and a penalty payment in the amount of the total One-Time Charges associated with this Service Order, and Spectrum shall have the option of terminating this Service Order, other related Service Orders and/or the Service Agreement. Spectrum shall also keep COMPANY information confidential.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**QQ. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION/COLLUSIVE BIDDING**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
X AIC				Contract 70988 O4

By submission of this proposal, the bidder certifies that it is the party making the foregoing proposal and that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham proposal, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and further that the bidder has not, directly or indirectly, submitted the proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

Spectrum understands and has complied.

**RR. STATEMENT OF NON-COLLUSION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
X AIC				Contract 70988 O4

The proposal shall be arrived at by the bidder independently and be submitted without collusion with, and without any direct or indirect agreement, understanding or planned common course of action with, any person; firm; corporation; bidder; Contractor of materials, supplies, equipment or services described in this RFP. Bidder shall not collude with, or attempt to collude with, any state officials, employees or agents; or evaluators or any person involved in this RFP. The bidder shall not take any action in the restraint of free competition or designed to limit independent bidding or to create an unfair advantage.

Should it be determined that collusion occurred, the State reserves the right to reject a bid or terminate the contract and impose further administrative sanctions.

Spectrum understands and has complied.

**SS. PRICES**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			x ATC	Contract 70988 O4

All prices, costs, and terms and conditions outlined in the proposal shall remain fixed and valid commencing on the opening date of the proposal until an award is made or the Request for Proposal is cancelled. Contractor's price for the services provided, as shown in Appendix A, shall remain fixed for the duration of the contract and shall be invoiced along with the actual cost of applicable fees and taxes Contractor is obligated to pass-through to the State each month. Non-recurring charges (NRC) and Monthly recurring charges (MRC) shall be invoiced in accordance with the original cost sheet. No invoice shall exceed the price contained on the contractor's original cost sheet. If increases to applicable fees and taxes, Contractor is obligated to pass-through to the State will cause the price to exceed the price on the original cost sheet Contractor may request an increase in price to cover actual increases in fees and taxes Contractor is obligated to pass-through to the State that exceed the Contractor's price on the original cost sheet. The Contractor must make a showing demonstrating the price increase and that the price exceeds the Contractor prices on the original cost sheet. The State shall have the right to refuse the price increase. No price increase shall be charged or billed until the Contract is amended to reflect the price increase. The State will be given full proportionate benefit of any price decrease during the term of the contract.

Contractor represents and warrants that all prices for services, now or subsequently specified, are as low as and no higher than prices which the Contractor has charged or intends to charge customers other than the State for the same or similar products and services of the same or equivalent quantity and quality for delivery or performance during the same periods of time. If, during the term of the contract, the Contractor shall reduce any and/or all prices charged to any customers other than the State for the same or similar products or services specified herein, the Contractor shall make an equal or equivalent reduction in corresponding prices for said specified products or services.

Contractor also represents and warrants that all prices set forth in the contract and all prices in addition, which the Contractor may charge under the terms of the contract, do not and will not violate any existing federal, state, or municipal law or regulations concerning price discrimination and/or price fixing. Contractor agrees to hold the State harmless from any such violation. Prices quoted shall not be subject to increase throughout the contract period unless specifically allowed by these specifications.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**TT. BEST AND FINAL OFFER**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
x ATC				Contract 70988 O4

The State will compile the final scores for all parts of each proposal. The award may be granted to the lowest responsible bidder. Alternatively, bidders may be requested to submit best and final offers. If best and final offers are requested by the State and submitted by the bidder, they will be evaluated based on cost. The award will then be granted to the lowest responsible bidder. However, a bidder should provide its best offer in its original proposal. Bidders should not expect that the State will request a best and final offer.

Spectrum understands.

**UU. ETHICS IN PUBLIC CONTRACTING**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
X ATC				Contract 70988 04

No bidder shall pay or offer to pay, either directly or indirectly, any fee, commission compensation, gift, gratuity, or anything of value to any State officer, legislator, employee or evaluator based on the understanding that the receiving person's vote, actions, or judgment will be influenced thereby. No bidder shall give any item of value to any employee of the State Purchasing Bureau or any evaluator.

Bidders shall be prohibited from utilizing the services of lobbyists, attorneys, political activists, or consultants to secure the contract. It is the intent of this provision to assure that the prohibition of state contact during the procurement process is not subverted through the use of lobbyists, attorneys, political activists, or consultants. It is the intent of the State that the process of evaluation of proposals and award of the contract be completed without external influence. It is not the intent of this section to prohibit bidders from seeking professional advice, for example consulting legal counsel, regarding terms and conditions of this Request for Proposal or the format or content of their proposal. If the bidder is found to be in non-compliance with this section of the Request for Proposal, they may forfeit the contract if awarded to them or be disqualified from the selection process.

Spectrum understands.

**VV. INDEMNIFICATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			X ATC	Contract 70988 04

**1. GENERAL**

The Contractor agrees to defend, indemnify, hold, and save harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Contractor, its employees, Subcontractors, consultants, representatives, and agents, except to the extent such Contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

**2. INTELLECTUAL PROPERTY**

The Contractor agrees it will, at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to, the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by the Contractor or its employees, Subcontractors, consultants, representatives, and agents; provided, however, the State gives the Contractor prompt notice in writing of the claim. The Contractor may not settle any infringement claim that will affect the State's use of the Licensed Software without the State's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the State's use of any intellectual property for which the Contractor has indemnified the State, the Contractor shall, at the

Contractor's sole cost and expense, promptly modify the item or items which were determined to be infringing, acquire a license or licenses on the State's behalf to provide the necessary rights to the State to eliminate the infringement, or provide the State with a non-infringing substitute that provides the State the same functionality. At the State's election, the actual or anticipated judgment may be treated as a breach of warranty by the Contractor, and the State may receive the remedies provided under this RFP.

**3. PERSONNEL**

The Contractor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel provided by the Contractor.

**4. SELF-INSURANCE**

The State of Nebraska is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the provisions of this agreement, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 – 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this agreement to the extent provided by law.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**WW. NEBRASKA TECHNOLOGY ACCESS STANDARDS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			x ATC	Contract 70988 O4

Contractor shall review the Nebraska Technology Access Standards, found at <http://nltc.nebraska.gov/standards/2-201.html> and ensure that products and/or services provided under the contract are in compliance or will comply with the applicable standards to the greatest degree possible. In the event such standards change during the Contractor's performance, the State may create an amendment to the contract to request the contract comply with the changed standard at a cost mutually acceptable to the parties.

Spectrum understands and will comply, where applicable, since this is mostly related with software and applications, which do not apply with the services(s) that Spectrum is proposing in this requested bid.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**XX. ANTITRUST**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
x APC				Contract 70988 O4

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with the contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

The Contractor agrees and understands that the contract shall constitute an assignment by the Contractor to the State of all rights, title, and interest in and to all causes of action that the contract may have under the antitrust laws of the United States or State for which causes of action have accrued or will accrue as the result of or in relation to the particular goods or services purchased or procured by the Contractor in the fulfillment of the contract with the State.

**YY. DISASTER RECOVERY/BACK UP PLAN**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
x APC				Contract 70988 O4

The Contractor shall have a disaster recovery and back-up plan, of which a copy should be provided to the State, which includes, but is not limited to equipment, personnel, facilities, and transportation, in order to continue services as specified under the specifications in the contract in the event of a disaster.

Please, review our Disaster Recovery on page 15.

**ZZ. TIME IS OF THE ESSENCE**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
x APC				Contract 70988 O4

Time is of the essence in the contract. The acceptance of late performance with or without objection or reservation by the State shall not waive any rights of the State nor constitute a waiver of the requirement of timely performance of any obligations on the part of the Contractor remaining to be performed.

Spectrum understands.

**AAA. RECYCLING**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
X AIC				Contract 70988 04

Preference will be given to items which are manufactured or produced from recycled material or which can be readily reused or recycled after their normal use as per Neb. Rev. Stat. §81-15,159.

Spectrum understands.

**BBB. DRUG POLICY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			X AIC	Contract 70988 04

Contractor certifies it maintains a drug free work place environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

Spectrum has a Drug Free Workplace Policy that is intended to ensure a work environment that is free from alcohol and illegal drugs and, thereby, safer and more productive for Spectrum's employees and customers. Upon request, Spectrum will provide State of Nebraska any applicable Drug Free Workplace documentation as required by law.

Spectrum has provided the Agreement, Contract 70988 04, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**CCC. EMPLOYEE WORK ELIGIBILITY STATUS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
X AIC				Contract 70988 04

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <http://das.nebraska.gov/materiel/purchasing.html>  
  
The completed United States Attestation Form should be submitted with the Request for Proposal response.
2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

Spectrum represents that it does participate and complies with the E-Verify Federal Work Authorization Program.

**DDD. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND INELIGIBILITY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
x ATC				Contract 70988 O4

The Contractor, by signature to this RFP, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). The Contractor also agrees to include the above requirements in any and all Subcontracts into which it enters. The Contractor shall immediately notify the Department if, during the term of this contract, Contractor becomes debarred. The Department may immediately terminate this contract by providing Contractor written notice if Contractor becomes debarred during the term of this contract.

Contractor, by signature to this RFP, certifies that Contractor has not had a contract with the State of Nebraska terminated early by the State of Nebraska. If Contractor has had a contract terminated early by the State of Nebraska, Contractor must provide the contract number, along with an explanation of why the contract was terminated early. Prior early termination may be cause for rejecting the proposal.

Spectrum is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions.

Spectrum understands and will comply.

**EEE. POLITICAL SUB-DIVISIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			x ATC	Contract 70988 O4

The Contractor may extend the contract to political sub-divisions conditioned upon the honoring of the prices charged to the State. Terms and conditions of the Contract must be met by political sub-divisions. Under no circumstances shall the State be contractually obligated or liable for any purchases by political sub-divisions or other public entities not authorized by Neb. Rev. Stat. §81-145, listed as "all officers of the state, departments, bureaus, boards, commissions, councils, and institutions receiving legislative appropriations." A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.

Similar terms of service may be extended to additional state or governmental jurisdictions upon mutual written agreement between parties. Spectrum will review each new future order for final acceptance and pricing will be determined on an individual case basis based on Spectrum's current monthly service fees, costs for construction, installation, etc.

**FFF. OFFICE OF PUBLIC COUNSEL**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
			x ATC	Contract 70988 04

If it provides, under the terms of this contract and on behalf of the State of Nebraska, health and human services to individuals; service delivery; service coordination; or case management, Contractor shall submit to the jurisdiction of the Office of Public Counsel, pursuant to NEB. REV. STAT. §§ 81-8,240 et seq. This section shall survive the termination of this contract and shall not apply if Contractor is a long-term care facility subject to the Long-Term Care Ombudsman Act, Neb. Rev. Stat. §§ 81-2237 et seq.

Spectrum agrees the laws of the State of Nebraska shall govern the Agreement and all matters arising out of or related to the Agreement. Spectrum does not typically agree to jurisdiction, however, unless it is a lawful requirement.

Spectrum has provided the Agreement, Contract 70988 04, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**GGG. LONG-TERM CARE OMBUDSMAN**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	Reject but agree to previously agreed to T's & C's per Form B. (Initial)	NOTES/COMMENTS:
x ATC				Contract 70988 04

If it is a long-term care facility subject to the Long-Term Care Ombudsman Act, Neb. Rev. Stat. §§ 81-2237 et seq., Contractor shall comply with the Act. This section shall survive the termination of this contract.

Spectrum agrees to comply with all local, state, and federal laws and regulation, as applicable to Spectrum Services.

#### IV. PROJECT DESCRIPTION AND SCOPE OF WORK

The objective of this RFP is to update and expand the network that is currently in place to serve the eligible education entities of Network Nebraska as defined by Neb. Rev. Stat. 79-1201.01(3). Network Nebraska is defined in Neb. Rev. Stat. 86-5,100 (LB1208, 2006). Network Nebraska shall consist of contractual agreements with providers to meet the demand of state agencies, local governments, and educational entities. Such network shall provide access to a reliable and affordable infrastructure capable of carrying a spectrum of services and applications, including distance education across the state. Only E-rate eligible entities will apply for E-rate discounts.

The State of Nebraska bids these services on behalf of numerous E-rate eligible education entities across the State. Each entity must be allowed a reasonable duration to hold a public meeting of its administrative board to approve its purchase from the resulting state contract(s) and to file its E-rate Form 471 prior to the national 2017 E-rate deadline and each succeeding year to be established by the USAC. Once Intents to Contract have been announced by the State, each contractor must work expeditiously toward a signed contract to allow enough time for the local approval process. Failure to reach a signed contract with the State prior to Thursday, February 16, 2017, may risk negation of purchases for the July 1, 2017 through June 30, 2018 performance year.

##### A. E-RATE

**The originating FCC Form 470 number for this RFP is 170055258.**

Accept &  
Initial

Each Bidder must have a Service Provider Identification Number (SPIN) from the Universal Service Administrative Company and be eligible to participate in the Universal Service Fund discount program for telecommunications services provided to the E-rate eligible entities. Bidder agrees to provide any discounts, including any accrued credits, for which the entity is eligible under the Universal Service Fund for school telecommunications services. Bidder will, at its expense, prepare and file all carrier documents and reports required for the eligible entities to receive the benefit of such discounts and credits. The Bidder's Service Provider Identification Number (SPIN) issued to bidder by the Universal Service Administrative Company must be included in the responding bid.

As required by federal law, providers of eligible services must comply with the Lowest Corresponding Price (LCP) rule:

##### 1. 47 CFR § 54.500(f)

Lowest corresponding price is the lowest price that a service provider charges to non-residential customers who are similarly situated to a particular school, library, or library consortium for similar services. ("Similarly situated" means the "geographic service area" in which a service provider is seeking to serve customers with any of its E-rate services.)

##### 2. 47 CFR § 54.511(b)

Providers of eligible services shall not charge schools, school districts, libraries, library consortia, or consortia including any of these entities a price above the lowest corresponding price for supported services, unless the Federal Communications Commission, with respect to interstate services or the state commission with respect to intrastate services, finds that the lowest corresponding price is not compensatory.

The Billed Entity Applicant Reimbursement (BEAR) FCC Form 472 is filed by the applicant and approved by the service provider after the applicant has paid for services in full. The Service Provider Invoice (SPI) FCC Form 474 is filed by the service provider after the applicant has been billed for the non-discount portion of the cost of eligible services. Note: Applicants can choose their method of invoicing; service providers cannot force applicants to use a particular method.

As required by USAC policy, the contractor must retain documents from the bidding process through ten (10) years past the last date of service. Documents may be retained in electronic format or paper. The document list includes, but is not limited to, copies of bids, signed contracts, proof of service delivery, invoices, documentation of any service down time, and any other document retention required by the FCC.

The bidder should provide the following information in response to this Request for Proposal and must provide prior to contract award.

**Service Provider Identification Number (SPIN): 143004508**

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.



**INDIVIDUAL SITES AGGREGATING AT THE FOLLOWING NETWORK NEBRASKA CORE LOCATIONS  
(Appendix A sites are e-rate eligible):**

This RFP is for Ethernet connectivity from Network Nebraska participant locations to one or more of the listed core aggregate locations (below). An award will be made for each participant location to a single core aggregation location based on lowest cost.

1. Omaha (2 locations)
2. Lincoln
3. Grand Island
4. Scottsbluff

**NOTES:**

- a. All services listed above will be offered to Schools and Libraries and therefore must meet E-rate guidelines for eligible services, products, service providers and contracts.
- a. All State agencies, the University of Nebraska, political subdivisions and other "eligible participants" will be allowed to purchase off this contract.
- b. There is no guarantee that any or all the institutions listed will purchase any or all of the services requested in this RFP.
- c. Network Nebraska has five (5) major network node locations that are used as "core" aggregation points:
  - i. Peter Kiewit Institute  
University of Nebraska –  
Omaha 1110 South 67th Street,  
Room 166 Omaha, Nebraska  
68182-0694
  - ii. NCC Carrier "Hotel"/NCC Co-location Centers,  
LLC. 1623 Farnam Street, Suite 300A  
Omaha, NE 68102
  - iii. University of Nebraska Computing Services Network  
Room 230 Nebraska Hall  
University of Nebraska-Lincoln  
901 North 17th Street  
Lincoln, Nebraska 68588-0521
  - iv. College Park  
3180 W Hwy 34. Room  
208.5 Grand Island, NE  
68801-7279
  - v. Panhandle Research and Extension  
Center 4502 Avenue I  
Scottsbluff, NE 69361-4939

Spectrum read, understands, and agrees to comply.

B.

#### PROJECT OVERVIEW

The objective of this section of the RFP is to identify Contractor(s) who will design, develop, and implement high speed data connectivity that will meet the current and future telecommunications needs of eligible participants over the term of the contract. Each bidder will provide cost-effective, scalable and flexible high speed data transport

services that can connect eligible entities listed in Appendix A to Network Nebraska. In each Section the bidder may bid on one or more of the eligible entities listed in Appendix A. Each site/service will be reviewed individually. When bidding Appendix A locations, the Bidder must bid all costs to provide connectivity from the entity listed to at least one of the Network Nebraska aggregation points listed in the Appendix A.

For Appendix A, the Bidder will include transport from the identified location with connectivity through the carriers' cloud and ending at one of the identified aggregation locations. Connectivity back to the aggregation location must have the capacity to support all eligible entities bid transmitting at full capacity at any given time. A one (1) Gigabit Ethernet interface physical hand-off is required as a minimum for the connection at the identified aggregation locations. The cost for connectivity back to the aggregation location MUST be figured into the MRC (monthly recurring charge) for the individual sites being bid. The State of Nebraska will not accept separate costs for the aggregation ports that connect all of the eligible entities to Network Nebraska. All co-location data center cross-connect and fiber path costs needed to provide the physical interface hand-over to Network Nebraska equipment will be the responsibility of the bidder. A co-location space will be provided at the aggregation locations for the Contractor.

Eligible entities may include colleges, universities, state government, political subdivisions and K-12 institutions. The network design must accommodate the full implementation of Network Nebraska connections including a statewide, multi-purpose backbone.

All proposals must meet the technical requirements as stated in the RFP. All Bidders may bid one or more sites/services as shown in Appendix A. In Appendix A, K-12 sites are arranged numerically by ESU and alphabetically by billed entity name.

The State requires the Bidder to bid a multi-purpose transport connection to interconnect the listed institutions along with the corresponding services that considers present, as well as future, state-of-the-art technologies.

Spectrum read, understands, and agrees to comply.

#### B. PROJECT ENVIRONMENT

The current environment consists of a multi-provider layer-2 high-speed Ethernet network. Multiple provider clouds connect to the various eligible entities. Appendix A connects eligible entities to Network Nebraska at one of the identified destination locations.

Spectrum read, understands, and agrees to comply.

#### C. PROJECT REQUIREMENTS

The K-12 schools and educational service units that require this service must be converted during the month of July 2017 and the month of July for each succeeding year. The circuits should be installed and tested by the first Friday

in August 2017 and each succeeding year, however neither the State nor the participating eligible entities can incur charges on these circuits until after July 1 of the implementation year due to E-rate. The cutover to the customer must be complete by the first Friday in August 2017 and each succeeding year or incur liquidated damages (see Section III, DD Liquidated Damages). Existing service must remain active until the final cutover (see Section IV, E. Transition Requirement). The State of Nebraska is cognizant of a growing demand for bandwidth. The State is interested in identifying contractor(s) who will meet the current and future telecommunications needs of eligible participants over the term of the contract. The contractor(s) will provide a cost-effective, scalable, and flexible transport service that will be able to meet the demands of the network participants and it is expected the services would meet any future needs of other eligible participants as deemed appropriate. Bidders shall identify services that are a normal part of their offering without additional fees.

Spectrum understands and will comply.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**D. TRANSITION REQUIREMENT**

Accept &  
Initial

Upon award of the contract to a new vendor, the Contractor shall continue providing any part or all of the services in accordance with the terms and conditions, requirements and specifications of the contract for a period not to exceed 90 calendar days after the expiration or termination of the contract for a price not to exceed those prices set forth in the contract.

Spectrum understands. Spectrum has provided the Agreement, Contract 70988 04, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**E. TECHNOLOGY REFRESH**

Accept &  
Initial

The State and the Contractor will work in partnership to ensure the services provided under this contract will be continuously refreshed as technologies evolve and user needs grow. The Chief Information Officer, in conjunction with, or on behalf of, all other participants, will assume the primary role in seeking and proposing new technologies and enhancements. This technology refreshment clause will be a required condition of the contract.

The State and the Contractor may conduct an annual review of the contract to review service offerings and pricing. These reviews may result in expanding the services offered by the Contractor to include new pricing elements or pricing modifications associated with improved economies of scale and/or technological innovations. Changes in the industry related to regulation and/or pricing mechanisms may also result in modification of rates identified in the services offered by the Contractor. These reviews will commence at the request of the State.

Spectrum understands. Spectrum has provided the Agreement, Contract 70988 04, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**F. SCOPE OF WORK**



Accept &  
Initial

The Contractor shall design, develop and implement a high-speed, IP-based, layer-2, Ethernet, wide area network to interconnect eligible entities as requested. The network interface to the customer's CPE must physically be Ethernet

with the capability to provide multiple virtual Ethernet interfaces via 802.1Q VLAN tagging.

The eligible entities' network connections must be bid according to the bandwidth ranges and to the acceptable aggregation sites as stipulated in Appendix A. The conversion will be performed over the summer of 2017 and each succeeding year and must be as transparent as possible with completion by the first Friday in August 2017 and each succeeding year.

For Appendix A, each connection that is bid must be connected from the site address identified to the aggregation site address. The core aggregation site connectivity MUST have the capacity to support all eligible entities connectivity to the core site transmitting at full purchased capacity over a single 1 Gigabit Ethernet interface or over a single 10 Gigabit Ethernet interface; multiple interfaces are allowed only as a redundant path for the primary connectivity. The new connectivity capacity can be aggregated at an existing "core" site interface as long as overall capacity of the core interface is not exceeded due to the introduction of the additional remote site capacity. The State will not allow a

separate cost for this "aggregation connection", that cost must be included as part of the individual site or sites being bid.

Spectrum read, understands, and agrees to comply.

Appendix A includes site choices that are "grayed out". The State will only accept bids for the bandwidths cited between the locations and the core aggregation sites that are not "grayed out". The Bidder can choose to give a price to bring the eligible entity back to any one or more of the eligible core destination locations except locations that are "grayed out" within the Appendix. For locations where multiple speeds have been requested, the State will add all bandwidths bid to arrive at a total overall site cost that will be the basis for a lowest cost award.

All bids for a single service location to multiple aggregation points will be compared against each other. Each service location will only have one award and the State will award the lowest cost bid from that service location to one of the identified locations that meets the technical requirements as stated in the RFP.

The support of end-to-end customer VLANs (C-VLANs) is REQUIRED. Support can be provided either by using the IEEE 802.1ad provider bridging standard (also referred to as QinQ tunneling), or by directly bridging the customer VLANs from end-to-end, without C-VLAN modification and without provider interaction. For example, as a customer VLAN tagged packet travels from a customer to the service provider, a customer-specific 802.1Q tag is added by the provider to each packet. This additional tag is used to segregate traffic into service-provider-defined service VLANs (S-VLANs). The original customer 802.1Q tag of the packet remains and is transmitted transparently, passing through the service provider's network. The Service Provider VLAN (S-VLAN) tag is added on egress for incoming packets, optionally including untagged packets. As the packet leaves the S-VLAN in the downstream direction, the service provider 802.1Q tag is removed, leaving the original customer tag on the packet.

Eligible entities that select this service will purchase their own network equipment and video equipment. The Contractor will need to work closely with these eligible entities (school districts, educational service units; etc.) to ensure that the appropriate network equipment and video equipment delivery is coordinated and ready for installation at the time the network conversion takes place.

This connectivity will transmit Internet, distance learning, and data transport between the eligible entities of Network Nebraska.

Appendix A additionally identifies the potential Network Nebraska Locations where transport can be handed off for each location bid.

Spectrum read, understands, and agrees to comply.

#### G. TECHNICAL REQUIREMENTS

The bidder must provide a network design in which: Layer 2 (802.1q/802.1p) VLAN and QoS tags must be allowed through the provided network connection and must remain unchanged by the provider.

Accept &  
Initial

1. Ethernet frames containing a 1500-byte payload (for a total minimum supported Ethernet frame size of 1542 bytes), must be allowed and flow as a single complete frame without any fragmentation by the provider's equipment. Reference: [http://en.wikipedia.org/wiki/Ethernet\\_frame](http://en.wikipedia.org/wiki/Ethernet_frame)
2. Layer 2 performance must be adequate to support jitter and latency sensitive applications (i.e. video over IP).
3. The network interface to the customer's CPE must be an Ethernet-based handover connection. The connection must support either 802.1q tagged frames or must support 802.1ad provider bridging. Network Nebraska WILL NOT coordinate customer VLAN tags with the provider; the provider must either tunnel the customer VLAN tags through the provider network or must leave the customer VLAN tags unchanged from end-to-end.
4. Allow participating institutions to manage their own IP address space and routing.
5. Performance metrics on contracted circuits must be provided to Network Nebraska staff within 24 hours of request.
6. Network Nebraska must be notified within 24 hours of performing QoS changes, network monitoring changes or any other network changes that may have a positive or negative effect on performance as outlined in the RFP.
7. The provided connection must be tested to prove performance before it will be considered complete and usable. Testing according to ITU-T Y.156sam or RFC-2544 for performance, frame-loss and latency is preferred but detailed performance, frame-loss, latency and QOS test disclosure is also acceptable. Testing must validate the minimum frame size specified is supported.
8. Every connection's receive AND transmit capacity must meet or exceed the bandwidth amount that is bid. Testing must validate that capacity meets the amount purchased before the connection will be considered complete and usable. If proof of end-to-end circuit capacity and testing is not provided, circuit acceptance will be delayed until networking personnel can verify that the circuit meets requirements.

Please, review our Spectrum Business Network Operation Center (NOC) on page 17.

**H. PROJECT PLANNING AND MANAGEMENT**

Accept &  
Initial

The State of Nebraska acknowledges that project management and implementation procedures will require alignment and adjustment of work processes for the Contractor's organizations, the educational entities, and the State. The alignment will be part of the contract finalization, however the bidder will respond to this RFP assuming the following responsibilities.

**1. STATE OF NEBRASKA AND EDUCATIONAL ENTITY MANAGEMENT STAFF**

The State of Nebraska and educational entity management staff will:

- a. Provide overall project direction and management.
- b. Review and approve all project plans and deliverables.
- c. Ensure that technical assistance and support are provided during the Contractor's implementation phases and ongoing upgrade design of this project.
- d. Establish project management guidelines by meeting with the Contractor's project management team as needed.
- e. Review and approve all project specific documentation standards and requirements for the various types of reports, technical/procedural documentation, and management materials that will be produced during the project.
- f. Coordinate other resources as needed to support the implementation process.
- g. Provide on-site assistance, as needed during the implementation phases of the project.
- h. Assist the Contractor in identifying eligible participants in the network as well as establishing guidelines with the Contractor for ordering, moving, adding or changing services.

Spectrum read, understands, and agrees to comply.

**2. CONTRACTOR**

The Contractor will:

- a. Coordinate and administer the requirements of the network service(s) that are proposed.
- b. Maintain toll free lines for voice and facsimile from the State to operational facilities for order entry and after hours help desk. Installation and maintenance may be subcontracted to one or more third parties to adequately cover the locations of the core transport backbone sites and to provide for rapid response in the event of a service disruption. The Contractor will provide information regarding intent to maintain its facilities after project implementation has been completed.
- c. Maintain toll free voice lines for after-hours helpdesk support for the duration of the contract. This point of contact will serve as the single point of contact for all services and equipment provided by the contract, including services and equipment subcontracted to another vendor.
- d. Provide upon request, technical information, graphs, charts, maps, photographs, block diagrams, operating manuals, and other information that will clearly show that the services offered are in full compliance with the minimum requirements of this RFP. In the event that the documentation furnished is at variance with the requirements of this RFP, the Contractor will explain in detail, with full engineering support data, the reasons why the proposed services meet the RFP requirements and should not be considered an exception



- e. Provide upon request, detailed network diagrams and drawings that clearly illustrate the network configuration and the functional relationships, as they are associated with the proposed services. These network diagrams will be available to the State electronically in a format agreed upon by the Contractor and the State to allow for import into various computer programs.
- f. Provide upon request, basic technical specifications for each item of equipment included in the proposal. The information to be provided will be in the form of published specification sheets or other illustrative literature.

If the Contractor is working with other "last mile" telecommunication providers to create an end to end solution, the Contractor must provide the State with technical contacts for the "last mile" provider.

If the bidder intends to Subcontract any part of its performance hereunder, the bidder must provide:

- i. name, address, and telephone number of the Subcontractor(s);
- ii. specific tasks for each Subcontractor(s);
- iii. percentage of performance hours intended for each Subcontract; and
- iv. total percentage of Subcontractor(s) performance hours.

Spectrum understands and has provided information regarding Spectrum's Network Operations Center (NOC) and Monitoring Policy within this response for the State's review.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

I. **SERVICE LEVEL GUARANTEES**

Accept &  
Initial

This network must support production applications that require a high degree of reliability and must operate with little or no service disruptions for twenty-four (24) hours a day, seven (7) days a week. Contractor(s) must provide solutions with the necessary redundancy, backup systems, and/or other disaster avoidance and recovery capabilities to support these needs. Contractor(s) must have the necessary staff for the installation and maintenance of their network responsibilities and necessary staff to assist the State in its installation and maintenance of critical network services. Upon request, the contractor will provide an explanation of any redundancy that is available as part of the site/service that will assure the required availability of the services. The following performance specifications are required service level guarantees. The Contractor will conform to these service level agreements, which are to include details concerning restoration procedures and goals, escalation procedures, and non-conformance penalties.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

J. **SPECIFICATIONS**

Accept &  
Initial

When planned network maintenance activities are conducted by the contractor which entails the risk of interrupting or diminishing service to Network Nebraska or its participants, the Network Nebraska Operation Center(s) must be notified at least three (3) business days in advance of the maintenance planned. Additionally, the contractor must agree to work with the Network Nebraska to find an alternate date and time of maintenance, if the proposed time would be particularly detrimental to Network Nebraska business needs. Mutually agreed upon maintenance activities are not considered a service violation and will not incur a service penalty.

The contractor must have in inventory the necessary spare equipment capable of restoring service in the event of contractor equipment failure. Maintenance contracts specifying next-day replacement or longer will not be considered an acceptable substitute for carrying inventory of appropriate replacement equipment.

The contractor must operate its own Network Operations Center(s) and provide a centralized trouble reporting and maintenance system that is staffed 24 hours a day, seven days a week. The contractor shall provide sufficient staff for peak and critical hours. The contractor shall provide Network Nebraska with a local and toll-free number for trouble reporting.

The contractor must respond to trouble reports within one (1) hour of notification. The Contractor must also provide an escalation procedure and contact list to be used for unresolved issues, including names, titles and phone numbers of contact persons in the escalation chain. Major service-affecting problems that are not resolved within two (2) hours of time after the notification of trouble shall constitute a prolonged outage and must be escalated.

Access to performance service metrics is required, with a preference toward live metrics.

Spectrum understands. Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

K. **IMPLEMENTATION PLAN**

Accept &  
Initial


The Bidder should submit with their proposal response, and must provide prior to award, an implementation plan for the deployment of the services, that reflect the services to be included in the associated contract. The plan must

clearly represent the constraints of time, scope and cost. At a minimum the implementation plan must include the project approach, scope of work, work breakdown structure (WBS), schedule, milestones, deliverables, risk assessment, mitigation strategies, resource planning and communication plans.

The Contractor will adhere to the implementation plan for deployment of services submitted as a requirement of this RFP.

Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.

**L. DEPLOYMENT STATUS REPORTS**

  
Accept &  
Initial

The Contractor's designated project manager will provide weekly reports of the status of any deployment schedules to the State's designated project manager. Deployment status reports will provide weekly information related to the adherence to the deployment schedule identified in Section C. Project Requirements, including identification of issues affecting the deployment schedule, and recommended resolution(s) to any identified barriers to network deployment.

**Spectrum understands and will comply.**

**M. BILLING**

\_\_\_\_\_  
Accept  
&  
Initial

The State will provide detailed billing instructions for each order as placed. In some cases the billed entity will be a consolidated billing to the State in an electronic format. For E-rate eligible entities, the Contractor may be instructed to bill each entity directly to ensure that appropriate E-rate processing can be accomplished. The Contractor must comply with all applicable E-rate requirements. The State may request a copy or summary of billings to other entities. Billings for the Individual Sites High Speed WAN must comply with the following specific requirements:

1. Eligible participants must file contract orders for equipment or services under this section that specifies the number and location of sites.
2. The billing to all eligible participants in a region for services under this section must reflect a cost per Individual location.
3. The Contractor must bill each entity directly that connects to the statewide network, rather than presenting a consolidated billing to the State of Nebraska.

**Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.**

**N. CERTIFICATION**

\_\_\_\_\_  
Accept  
&  
Initial

The State requires that the Bidder be certificated or permitted by, or registered with, the Public Service Commission Accept & (PSC) to provide the services outlined in this Section of this RFP (Neb.Rev.Stat. 81-1120.19).

**Spectrum understands and has included all applicable Fees and Surcharges in its cost proposal. Fees and Surcharges are subject to change. Internet service is not a State regulated service under the jurisdiction of the State Commission, therefore, we would not include internet in any company tariff.**

**Spectrum has provided the Agreement, Contract 70988 O4, and effective May 25, 2016, by and between the parties hereunder for the State's review. This Agreement shall serve as the basis for all mutually agreed upon terms and conditions as set forth in this RFP response.**

**O. COST SHEET INSTRUCTIONS**

  
Accept  
&  
Initial

Proposals will address the impact of normal growth, as well as planned and unplanned network expansion or service enhancement. All prices shall be proposed as an individual location/school cost on a recurring or non-recurring basis.

**All bidder costs must be reflected in either the monthly recurring or non-recurring charges, or taxes and fees column as listed in the Appendix A. No additional charges will be accepted.** The State shall not be required to purchase any specific service or minimum quantities of network services. The quantities provided are for the sole purpose of assisting the Bidders in preparation of their proposals and for the State to consider the feasibility of the proposed network solutions. The State shall not be responsible for any cost that is not identified in the Bidder's cost proposal. The State will not consider bids that offer discounts based upon the number of network locations that join the network.

Please display costs in the format provided in the Appendix A. The bid prices listed must include the cost of doing business as indicated below. Provide a cost number in the appropriate cell.

**1. NETWORK EQUIPMENT AND HARDWARE COSTS**

Network equipment and hardware (non-CPE) will be part of and included in the itemized circuit costs. Circuit costs will be bundled costs and must include all necessary components needed to utilize the circuit at the bandwidth bid.

**2. INSTALLATION COSTS**

If non-recurring installation/set-up charges are applicable, these rates shall be delineated in the cost portion of the proposal. This cost for the circuit installation shall include all one-time costs associated with termination to the demarcation point from the network side and/or fees associated with interconnection to local exchange carriers.

- a. All fees that would be incurred for a fully functioning end-to-end connection, whether recurring or non-recurring, must be included in the cost. All cross-connect, and facilities related charges that would be incurred to physically connect the circuit to Network Nebraska equipment on both ends must be included in the cost.

**3. SOFTWARE, WARRANTY, AND MAINTENANCE COSTS**

The Bidder will include warranty and maintenance of the provided circuits in the service rates.

**4. QUANTITY**

The State has the option of purchasing any quantity of services in any increment proposed. The State reserves the right to purchase any quantity of service. There will be no minimum or maximum quantities imposed as a result of any contract. All State agencies, the University of Nebraska, political subdivisions and other "eligible participants" will be allowed to purchase off this contract.

**5. PROPOSAL COST TABULATION**

The proposal cost will be tabulated with an intent to award made based on the monthly recurring costs multiplied by the applicable length of service in months (36), not to include extensions, plus the one-time non-recurring costs.

SAMPLE—Bidder 'A' will be compared to other bidders on School X based on overall cost of \$100,105.20 for 36 months.

Entity	Bandwidth	Bidder 'A' NRC	Bidder 'A' MRC	Bidder 'A' Taxes/Fees	Bidder 'A' 36-month Cost
School X	100Mbps	\$0	\$500	\$34.75	\$19,251.00
School X	200Mbps	\$0	\$600	\$41.70	\$23,101.20
School X	300Mbps	\$0	\$700	\$48.65	\$26,951.40
School X	400Mbps	\$0	\$800	\$55.60	\$30,801.60
Total					\$100,105.20

Spectrum understands and has complied.

**Form A**

**Bidder Contact Sheet**

**Request for Proposal Number 5495 Z1**

The Bidder Contact Sheet should be completed and submitted with each response to this Request for Proposal. This is intended to provide the State with information on the bidder's name and address, and the specific person(s) who are responsible for preparation of the bidder's response. Each bidder shall also designate a specific contact person who will be responsible for responding to the State if any clarifications of the bidder's response should become necessary. This will also be the person who the State contacts to set up a presentation/demonstration, if required.

Preparation of Response Contact Information	
Bidder Name:	Charter Fiberlink-Nebraska, LLC
Bidder Address:	12405 Powerscourt, Dr. St. Louis, MO 63131
Contact Person & Title:	Chris Crawford & Sandra Gilsdorf
E-mail Address:	Chris.Crawford@Charter.Com & Sandra.Gilsdorf@Charter.com
Telephone Number (Office):	(715) 301-4074 (402) 421-0396
Telephone Number (Cellular):	
Fax Number:	

Each bidder shall also designate a specific contact person who will be responsible for responding to the State if any clarifications of the bidder's response should become necessary. This will also be the person who the State contacts to set up a presentation/demonstration, if required.

Communication with the State Contact Information	
Bidder Name:	Charter Fiberlink-Nebraska, LLC
Bidder Address:	12405 Powerscourt, Dr. St. Louis, MO 63131
Contact Person & Title:	Chris Crawford & Sandra Gilsdorf
E-mail Address:	Chris.Crawford@Charter.Com & Sandra.Gilsdorf@Charter.Com
Telephone Number (Office):	(715) 301-4074 (402) 421-0396
Telephone Number (Cellular):	
Fax Number:	


**Form B**

**Notification of Intent to Bid and Acceptance or Exceptions to Section III Terms and Conditions and  
provision of Service Level Agreement (SLA)**

**Request for Proposal Number 5495 Z1**

Bidder Name:	Charter Fiberlink-Nebraska, LLC
Bidder Address:	12405 Powerscourt, Dr. St. Louis, MO 63031
Contact Person:	Chris Crawford & Sandra Gilsdorf
E-mail Address:	<a href="mailto:Chris.Crawford@Charter.com">Chris.Crawford@Charter.com</a> & <a href="mailto:Sandra.Gilsdorf@Charter.com">Sandra.Gilsdorf@Charter.com</a>
Telephone Number:	(715) 301-4074 (402) 421-0396
Fax Number:	

If your firm has exceptions to the Terms and Conditions (Section III) or has SLAs or other documents, please check which item applies and sign in the space provided below.

<div>Charter Fiberlink-Nebraska, LLC (firm name) is agreeable to using Terms and Conditions (Section III) and or the SLA or other documents previously agreed to in contract <u>7 0 9 8 8</u> 04 SIGN: </div>
<b>OR</b>
<div>_____ (firm name) has attached exceptions to the Terms and Conditions (Section III) along with an SLA or other documents in MS Word. SIGN: _____</div>

The "Notification of Intent to Bid and Acceptance or Exceptions to Section III Terms and Conditions and provision of Service Level Agreement (SLA)" form should be submitted to the State Purchasing Bureau via e-mail ([as.materieipurchasing@nebraska.gov](mailto:as.materieipurchasing@nebraska.gov)), facsimile (402-471-2089), hand delivered or US Mail by January 6, 2017 per the Schedule of Events.

## ADDENDUM ONE

Date: December 22, 2016  
To: All Bidders  
From: Robert Thompson / Michelle Thompson, Buyers  
AS Materiel State Purchasing Bureau  
RE: Addendum for Request for Proposal 5495 Z1  
to be opened January 19, 2017 at 2:00 p.m. Central

Section IV, A. E-RATE is hereby amended as follows:

The originating FCC Form 470 number for this RFP is **170055258**.

**This addendum will become part of the proposal and should be acknowledged with the Request for Proposal**

## ADDENDUM TWO, QUESTIONS and ANSWERS

Date: January 4, 2017

To: All Bidders

From: Robert Thompson / Michelle Thompson, Buyers  
AS Materiel State Purchasing Bureau

RE: Addendum for Request for Proposal 5495 Z1  
to be opened ~~January 19, 2017~~ **January 26, 2017** at 2:00 p.m. Central

### Questions and Answers

Following are the questions submitted and answers provided for the above mentioned Request for Proposal. The questions and answers are to be considered as part of the Request for Proposal. It is the Bidder's responsibility to check the State Purchasing Bureau website for all addenda or amendments.

Question Number	RFP Section Reference	RFP Page Number	Question	State Response
1.	D. Communications with State Staff and Evaluators - Exceptions	1	Who may we contact for site survey information if needed?	The State of Nebraska will provide a list of site contacts to arrange site visits. (See Attachment Three.) The site visits are made possible solely for the purpose of viewing the premises to determine costs to make an informed bid. Any statements or information provided by non-State personnel shall not be binding to RFP 5495 Z1 or the State of Nebraska.
2.	i. Scope of Requested For Proposal A. Schedule of Events	1	Due to the extensive schedule of Christmas and New Year holidays, will the State grant a request for a 7 day extension to the RFP Response due date?	The State of Nebraska can accommodate a seven-day extension. The new RFP bid opening date will be Thursday, January 26,

				2:00pm CT for all bidders. See Addendum Three for a revised Schedule of Events.
3.	III. Terms and Conditions	5	Is it acceptable to use the current MSA in place?	Yes, providing that the MSA resulted from a previous State Purchasing RFP for participants of Network Nebraska (e.g. RFPs 5153, 4582, 4180, 3886, 3827) and not the Office of the CIO contracts. Please use the Form B (last page of the RFP) to indicate your firm's desire to use a previously agreed-to MSA. Bidder may also indicate this by initialing the appropriate boxes in the tables in Section III.
4.	G. Technical Requirements	31	Are all locations to be connected via optical Ethernet?	For customer locations, a copper handoff is allowed if speed and distance limitations are not exceeded. Optical handoffs are also allowed, using either single-mode or multi-mode optics and cables. The handover must support the distance and speed that is needed to complete the connection to customer equipment.
5.	G. Technical Requirements	31	What is the type of handoff required at the aggregation point – optical or electrical?	Optical; the interface will be a SFP or SFP+ Ethernet optic on the Network Nebraska side (a Single-mode optic is preferred but can be a multi-mode handover if speed and distance allow it).
6.	K. Implementation Plan	33	Will the current service provider be dropped for any location awarded to a new service provider?	It is anticipated that all applicable sites will migrate to the new RFP 5495Z1 contract, including its terms, duration and awardee, providing the new service provider terms and pricing are found to be in the best interests of the entity's site location.
7.	K. Implementation	33	Is the Customer willing to hot cut service at 211 No.	A hot-cut is allowed as long as the change-over date

	Plan		Washington St., Grand Island or prefer a migration to the new service provider?	and time can be agreed upon by the customer and both incoming and outgoing providers to minimize the service outage duration. Transition times more than a few hours are generally not accepted. New service providers should plan for a service start date on or about July 1, and no later than August 4, 2017.
8.	O. Cost Sheet Instructions 5. Proposal Cost Tabulation	34	Will an exception be granted to delete bandwidth not offered to the calculation average?	No. The evaluation formula computes the lowest overall cost for 36 months for all of the listed bandwidths on each circuit. It is in the best interest of prospective bidders to provide cost data for each of the listed bandwidths for any or all of the 22 circuits listed in Appendix A.
9.	O. Cost Sheet Instructions	34	Is the State open to multiple carriers based on price per end point, or is an "all-or-none" response required?	The State of Nebraska may award each individual circuit to the lowest cost bidder, providing that the bidder has indicated compliance with the terms and conditions and technical requirements. There will be no conditional bids or "all or none" bids accepted.

This addendum will become part of the proposal and should be acknowledged with the Request for Proposal.

## ADDENDUM THREE, REVISED SCHEDULE OF EVENTS

Date: January 4, 2017

To: All Bidders

From: Robert Thompson / Michelle Thompson, Buyers  
AS Materiel State Purchasing Bureau

RE: Addendum for Request for Proposal 5495 Z1  
to be opened January 26, 2017 at 2:00 p.m. Central

ACTIVITY		DATE/TIME
5.	Proposal Opening Location: State Purchasing Bureau 1526 K Street, Suite 130 Lincoln, NE 68508	<del>January 19, 2017</del> <b>January 26, 2017</b> 2:00 PM Central Time
6.	Review for conformance of mandatory requirements	<del>January 19, 2017</del> <b>January 26, 2017</b>
7.	Evaluation period	<del>January 20, 2017 – January 24, 2017</del> <b>January 27, 2017 – January 30, 2017</b>
8.	Post "Letter of Intent to Contract" to Internet at: <a href="http://das.nebraska.gov/materiel/purchasing.html">http://das.nebraska.gov/materiel/purchasing.html</a>	<del>January 26, 2017</del> <b>February 1, 2017</b>
9.	Contract finalization period	<del>January 26, 2017 – February 9, 2017</del> <b>February 1, 2017 – February 16, 2017</b>
10.	Contract award	<del>February 16, 2017</del> <b>February 23, 2017</b>

ACTIVITY		DATE/TIME
11.	Contractor start date	<del>February 16, 2017</del> February 23, 2017

This addendum will become part of the proposal and should be acknowledged with the Request for Proposal.

## ADDENDUM FOUR, QUESTION & ANSWER AND REVISED SCHEDULE OF EVENTS

Date: January 6, 2017

To: All Bidders

From: Robert Thompson / Michelle Thompson, Buyers  
AS Materiel State Purchasing Bureau

RE: Addendum for Request for Proposal 5495 Z1  
to be opened January 26, 2017 at 2:00 p.m. Central

### Questions and Answers

Following are the questions submitted and answers provided for the above mentioned Request for Proposal. The questions and answers are to be considered as part of the Request for Proposal. It is the Bidder's responsibility to check the State Purchasing Bureau website for all addenda or amendments.

Question Number	Question	State Response
1.	<p>In the RFP, it states that questions and exceptions need to be submitted by January 6<sup>th</sup>.</p> <p>Can you please elaborate on what exceptions would be due tomorrow? Is it just the exceptions to section III or all exceptions to the bid? Please advise.</p>	<p>Questions were due December 30<sup>th</sup> and responses were posted to our site January 4<sup>th</sup>, link provided.</p> <p><a href="http://das.nebraska.gov/materiel/purchasing/5495/5495.html">http://das.nebraska.gov/materiel/purchasing/5495/5495.html</a> (Note: If you have visited our site in the past, please refresh your browser and/or delete your cache/cookies to see the most recent updates.)</p> <p>Exceptions the State is requesting to be submitted early with a completed Form B, by the date shown in the schedule of events, are any exceptions to Sections III Terms and Conditions. Form B also requests bidders to include any Service Level Agreements (SLAs) or other documents such as customer agreements, user agreements. Bidders also may mark their agreement to use previously agreed to Terms and Conditions as noted in the State's response to Question 3. In Addendum Two. Please review Form B carefully along with the tables provided with each Term/Condition in Sections III., and respond accordingly.</p>

<p>Is there any way that we can get an extension on that date as our legal team is still reviewing the terms and conditions?</p>	<p>The early submission of exceptions and other documents is to allow the State additional time to review exceptions due to the limited time from contract start date and Federal filing date.</p> <p>Yes, please see the revised schedule of events below.</p>
--	---

#### REVISED SCHEDULE OF EVENTS

	ACTIVITY	DATE/TIME
4.	Last day to submit "Letter of Intent To Bid and Acceptance or Exceptions to Section III Terms and Conditions and provision of Service Level Agreement (SLA)"	<del>January 6, 2017</del> <b>January 12, 2017</b>
5.	Proposal Opening Location: State Purchasing Bureau 1526 K Street, Suite 130 Lincoln, NE 68508	<del>January 19, 2017</del> <b>January 26, 2017</b> 2:00 PM Central Time
6.	Review for conformance of mandatory requirements	<del>January 19, 2017</del> <b>January 26, 2017</b>
7.	Evaluation period	<del>January 20, 2017 –</del> <del>January 24, 2017</del> <b>January 27, 2017 –</b> <b>January 30, 2017</b>
8.	Post "Letter of Intent to Contract" to Internet at: <a href="http://das.nebraska.gov/materiel/purchasing.html">http://das.nebraska.gov/materiel/purchasing.html</a>	<del>January 26, 2017</del> <b>February 1, 2017</b>
9.	Contract finalization period	<del>January 26, 2017 –</del> <del>February 9, 2017</del> <b>February 1, 2017 –</b> <b>February 16, 2017</b>
10.	Contract award	<del>February 16, 2017</del> <b>February 23, 2017</b>
11.	Contractor start date	<del>February 16, 2017</del> <b>February 23, 2017</b>

This addendum will become part of the proposal and should be acknowledged with the Request for Proposal.

## **ADDENDUM FIVE, ADMONITION TO BIDDERS and NOTIFICATION OF INTENT TO BID**

Date: January 13, 2017

To: All Bidders

From: Robert Thompson / Michelle Thompson, Buyers  
AS Materiel State Purchasing Bureau

RE: Addendum for Request for Proposal 5495 Z1  
to be opened January 26, 2017 at 2:00 p.m. Central

The list of bidders who submitted their completed Form B is posted on the RFP 5495 Z1 webpage. Bidders who proposed exceptions are **not** required to have State acceptance in order to submit an RFP response.

In order to qualify for an award, all bidders must still submit an RFP response that meets the Mandatory Requirements per Section II, K excerpted below by the proposal opening date and time provided on Addendum Three, Revised Schedule of Events.

### **K. MANDATORY REQUIREMENTS**

The proposals will first be examined to determine if all mandatory requirements listed below have been addressed to warrant further evaluation. Proposals not meeting mandatory requirements will be excluded from further evaluation. The mandatory requirement items are as follows:

1. Request For Proposal For Contractual Services form, signed in ink;
2. Completed Section III;
3. Cost Proposal (Appendix A).

This addendum will become part of the proposal and should be acknowledged with the Request for Proposal.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/13/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Marsh USA Inc. 701 Market Street, Suite 1100 St. Louis, MO 63101-1830 Attn: St.Louis.CertRequest@marsh.com Fax: 212-948-0811	<b>CONTACT NAME:</b>	
	<b>PHONE (A/C, No, Ext):</b>	<b>FAX (A/C, No):</b>
<b>INSURED</b> Charter Communications, Inc. 12405 Powerscourt Drive St. Louis, MO 63131	<b>E-MAIL ADDRESS:</b>	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A:</b> Old Republic Insurance Company	<b>NAIC #</b> 24147
	<b>INSURER B:</b> ACE Property and Casualty Insurance Company	<b>20699</b>
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
<b>INSURER E:</b>		
<b>INSURER F:</b>		

## COVERAGES

CERTIFICATE NUMBER:

CHI-006483847-07

REVISION NUMBER:4

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR INSD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			MWZY 305715	11/01/2015	12/01/2016	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPIOP AGG \$ 2,000,000 OTHER: \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			MWTB 305710	11/01/2015	12/01/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ OTHER: \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTIONS <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE			XCOG28119816001	05/18/2016	05/18/2017	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 OTHER: \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	MWC 305714 01	11/01/2016	12/01/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 2,000,000 E.L. DISEASE - EA EMPLOYEE \$ 2,000,000 E.L. DISEASE - POLICY LIMIT \$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

## CERTIFICATE HOLDER

## CANCELLATION

Charter Communications, Inc. 12405 Powerscourt Drive St. Louis, MO 63131	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Manashi Mukherjee <i>Manashi Mukherjee</i>
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# **ADDITIONAL REMARKS SCHEDULE**

Page 2 of 2

AGENCY Marsh USA Inc.		NAMED INSURED Charter Communications, Inc. 12405 Powerscourt Drive St. Louis, MO 63131	
POLICY NUMBER			
CARRIER	NAIC CODE	EFFECTIVE DATE:	

## **ADDITIONAL REMARKS**

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

Charter Communications, Inc. and their:

- subsidiaries, associated, affiliated and inter-related companies;
- controlled or majority (more than 50%) owned partnerships, limited liability companies;
- interest only in (or its subsidiaries' interest in) any other partnerships or joint ventures or limited liability companies;
- interest in (or its subsidiaries' interest in) any company or organization coming under its active management or control;
- any entity or party required to be insured under any contract or agreement which may now exist, may have previously existed, or may hereafter be created or acquired.

American Cable Entertainment Company, LLC	Charter Communications VI, LLC	HPI Acquisition Co., L.L.C.
Athens Cablevision, Inc.	Charter Communications V, LLC	Interlink Communication Partners, LLC
Ausable Cable TV, Inc.	Charter Communications, LLC	Long Beach, LLC
Cable Equities Colorado, LLC	Charter Video Electronics, Inc.	Marcus Cable Associates, L.L.C.
CC10, LLC	Dellon Cablevision, Inc.	Marcus Cable of Alabama, L.L.C.
CC Michigan, LLC	Falcon Cable Media, a California Limited Partnership	Marcus Cable, Inc.
CC Systems, LLC	Falcon Cable Systems Company II, L.P.	Midwest Cable Communications, Inc.
CC VII Operating, LLC	Falcon Cablevision, a California Limited Partnership	Peachtree Cable TV, L.P.
CCO SoCal I, LLC	Falcon Community Cable, L.P.	Plattsburgh Cablevision, Inc.
CCO SoCal II, LLC	Falcon Community Ventures I Limited Partnership	Renaissance Media, LLC
Charter Cable Partners, L.L.C.	Falcon First Cable of New York, Inc.	Rifkin Acquisition Partners, LLC
Charter Communications Entertainment I, LLC	Falcon First Cable of the Southeast, Inc.	Robin Media Group, Inc.
Charter Communications Entertainment II, LLC	Falcon Telecable, a California Limited Partnership	Scottsboro TV Cable, Inc.
Charter Communications Operating, LLC	Falcon Video Communications, L.P.	Tennessee, LLC
Charter Communications Properties LLC	The Helicon Group, L.P.	Tloga Cable Company, Inc.
Bresnan Communications, LLC	Hometown T.V., Inc.	Vista Broadband Communications, LLC
Bresnan Digital Services, LLC	Bresnan Broadband Holdings, LLC	Bresnan Microwave of Montana, LLC
Bresnan Broadband of Utah, LLC	Bresnan Broadband of Colorado, LLC	Bresnan Broadband of Montana, LLC
Charter Communications VII LLC	Bresnan Broadband of Wyoming, LLC	Bright House Networks (eff. 5/18/16)
BHN Home Security Services LLC		

...and any corporation or other business organization other than a joint venture in which the Named Insured shown in the declarations has or acquires during the policy period an ownership of more than 50% and which is domiciled within the United States of America, its territories or possessions, Puerto Rico or Canada.

# APPENDIX A

FIRM NAME: \_Charter Fiberlink-Nebraska, LLC\_\_\_\_\_

Circuit #	USAC Billed Entity Number	ESJ	BILLED ENTITY NAME FIBER SITE NAME	SEEKING	Non-recurring Cost- - Grand Island, 3180 W. Hwy 34	Total Monthly Recurring-- Grand Island, 3180 W. Hwy 34	Monthly Taxes and Fees*- Grand Island, 3180 W. Hwy 34	Total 36-month Cost-- Grand Island, 3180 W. Hwy 34
K-12 SCHOOL DISTRICTS NEW LIBRARY CONNECTIONS TO NETWORK NEBRASKA								
6	138849	9	HASTINGS PUBLIC LIBRARY HASTINGS PUBLIC LIBRARY 517 W 4TH ST HASTINGS, NE 68901-7560 (402)461-2346 ADAMS COUNTY	NEW SERVICE				
				100 Mbps	\$ -	\$ 400.00	\$ 77.20	\$ 17,179.20
				200 Mbps	\$ -	\$ 450.00	\$ 86.85	\$ 19,326.60
				300 Mbps	\$ -	\$ 500.00	\$ 96.50	\$ 21,474.00
				400 Mbps	\$ -	\$ 550.00	\$ 106.15	\$ 23,621.40
				500 Mbps	\$ -	\$ 600.00	\$ 115.80	\$ 25,768.80
				600 Mbps	\$ -	\$ 650.00	\$ 125.45	\$ 27,916.20
				700 Mbps	\$ -	\$ 700.00	\$ 135.10	\$ 30,063.60
				800 Mbps	\$ -	\$ 750.00	\$ 144.75	\$ 32,211.00
				900 Mbps	\$ -	\$ 800.00	\$ 154.40	\$ 34,358.40
				1,000 Mbps	\$ -	\$ 850.00	\$ 164.05	\$ 36,505.80
7	138719	10	GRAND ISLAND PUBLIC LIBRARY GRAND ISLAND PUBLIC LIBRARY 211 N WASHINGTON ST GRAND ISLAND, NE 68831-5855 (308) 385-5333 HALL COUNTY	UPGRADE				
				100 Mbps	\$ -	\$ 400.00	\$ 55.80	\$ 16,408.80
				200 Mbps	\$ -	\$ 450.00	\$ 62.78	\$ 18,459.90
				300 Mbps	\$ -	\$ 500.00	\$ 69.75	\$ 20,511.00
				400 Mbps	\$ -	\$ 550.00	\$ 76.73	\$ 22,562.10
				500 Mbps	\$ -	\$ 600.00	\$ 83.70	\$ 24,613.20
				600 Mbps	\$ -	\$ 650.00	\$ 90.68	\$ 26,664.30
				700 Mbps	\$ -	\$ 700.00	\$ 97.65	\$ 28,715.40
				800 Mbps	\$ -	\$ 750.00	\$ 104.63	\$ 30,766.50
				900 Mbps	\$ -	\$ 800.00	\$ 111.60	\$ 32,817.60
				1,000 Mbps	\$ -	\$ 850.00	\$ 118.58	\$ 34,868.70
21			CREIGHTON UNIVERSITY CREIGHTON COLLEGE OF NURSING-HASTINGS CAMPUS 715 N SAINT JOSEPH ST HASTINGS, NE 68901-4471 (402)461-5281 ADAMS COUNTY	NEW SERVICE				
				100 Mbps	\$ -	\$ 400.00	\$ 77.20	\$ 17,179.20
				200 Mbps	\$ -	\$ 450.00	\$ 86.85	\$ 19,326.60
				300 Mbps	\$ -	\$ 500.00	\$ 96.50	\$ 21,474.00
				400 Mbps	\$ -	\$ 550.00	\$ 106.15	\$ 23,621.40
				500 Mbps	\$ -	\$ 600.00	\$ 115.80	\$ 25,768.80
				600 Mbps	\$ -	\$ 650.00	\$ 125.45	\$ 27,916.20
				700 Mbps	\$ -	\$ 700.00	\$ 135.10	\$ 30,063.60
				800 Mbps	\$ -	\$ 750.00	\$ 144.75	\$ 32,211.00
				900 Mbps	\$ -	\$ 800.00	\$ 154.40	\$ 34,358.40
				1,000 Mbps	\$ -	\$ 850.00	\$ 164.05	\$ 36,505.80

\*IF THE BIDDER CHOOSES TO INCLUDE TAXES AND FEES IN THE NRC AND MRC, THE TAXES AND FEES COLUMNS SHOULD REMAIN BLANK.

**ADDENDUM ONE to Contract Award  
Terms and Conditions  
Contract 70988 O4 High speed transport services for participants of Network Nebraska-Education  
Between  
The State of Nebraska and Charter Fiberlink-Nebraska, LLC**

The following Terms and Conditions, Addendum One of Contract 70988 O4 have been reviewed and agreed upon between Charter Fiberlink-Nebraska, LLC "Contractor" and the State of Nebraska "State". This addendum will become part of the contract for High speed transport services for participants of Network Nebraska-Education. The terms and conditions of this Addendum shall supersede, prevail and govern in the case of any inconsistencies with the Terms and Conditions indicated in Section III of the Request for Proposal.

By signing this Addendum the Contractor guarantees compliance with the provisions stated herein, agrees to the terms and conditions and certifies Contractor maintains a drug free work place environment.

**GLOSSARY OF TERMS**

**Agreement:** Notwithstanding any other definition to the contrary, shall mean Addendum One as executed by the Parties, recognizing the order of precedence (A. AWARD) and conflicting language provisions (GGG. LICENSE/SERVICE OR OTHER AGREEMENT).

**Third-Party:** Any person or entity, including but not limited to fiduciaries, shareholders, owners, officers, managers, employees, legally disinterested persons, and sub-contractors, agents and their employees. It shall not include any entity or person who is an interested party to the contract or agreement.

**III. TERMS AND CONDITIONS**

**A. GENERAL**

The contract resulting from this Request for Proposal shall incorporate the following documents:

1. Amendment to Contract Award with the most recent dated amendment having the highest priority;
2. Contract Award and any attached Addenda;
3. The Request for Proposal form and the Contractor's Proposal, signed in ink;
4. Amendments to RFP and any Questions and Answers; and
5. The original RFP document and any Addenda.

These documents constitute the entirety of the contract.

Unless otherwise specifically stated in a contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendment to Contract Award with the most recent dated amendment having the highest priority, 2) Contract Award and any attached Addenda, 3) the signed Request for Proposal form and the Contractor's Proposal, 4) Amendments to RFP and any Questions and Answers, 5) the original RFP document and any Addenda.

Any ambiguity in any provision of this contract which shall be discovered after its execution shall be resolved in accordance with the rules of contract interpretation as established in the State of Nebraska.

Once proposals are opened they become the property of the State of Nebraska and will not be returned.

**B. AWARD**

All purchases, leases, or contracts which are based on competitive proposals will be awarded according to the provisions in the Request for Proposal. The State reserves the right to reject any or all proposals, wholly or in part, or to award to multiple bidders in whole or in part, and at its discretion, may withdraw or amend the Request for Proposal at any time. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the proposal, and do not improve the bidder's competitive position. All awards will be

made in a manner deemed in the best interest of the State. The Request for Proposal does not commit the State to award a contract. If, in the opinion of the State, revisions or amendments will require substantive changes in proposals, the due date may be extended.

By submitting a proposal in response to this Request for Proposal, the bidder grants to the State the right to contact or arrange a visit in person with any or all of the bidder's clients.

Once intent to award decision has been determined, it will be posted to the Internet at:  
<http://das.nebraska.gov/materiel/purchasing.html>

Grievance and protest procedure is available on the Internet at:  
[http://das.nebraska.gov/materiel/purchase\\_bureau/docs/vendors/protest/ProtestGrievanceProcedureForVendors.pdf](http://das.nebraska.gov/materiel/purchase_bureau/docs/vendors/protest/ProtestGrievanceProcedureForVendors.pdf)

Any protests must be filed by a vendor within ten (10) business days after the intent to award decision is posted to the Internet.

**C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION**

The Contractor shall comply with all applicable local, state and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Contractors of the State of Nebraska, and their Subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensation, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §48-1101 to 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Contractor shall insert a similar provision in all Subcontracts for services to be covered by any contract resulting from this Request for Proposal.

**D. PERMITS, REGULATIONS, LAWS**

The Contractor shall procure and pay for all permits, licenses and approvals necessary for the execution of the contract. The Contractor shall comply with all applicable local, state, and federal laws, ordinances, rules, orders, and regulations.

**E. DELETED**

**F. INSURANCE REQUIREMENTS**

The Contractor shall not commence work under this contract until all the insurance required hereunder has been obtained and such insurance has been approved by the State. The Contractor shall maintain all required insurance for the life of this contract and shall ensure that the State Purchasing Bureau has the most current certificate of insurance throughout the life of this contract. If Contractor will be utilizing any Subcontractors, the Contractor is responsible for obtaining the certificate(s) of insurance required herein under from any and all Subcontractor(s). The Contractor is also responsible for ensuring Subcontractor(s) maintain the insurance required until completion of the contract requirements. The Contractor shall not allow any Subcontractor to commence work on any subcontract until all similar insurance required of the Subcontractor has been obtained and approved by the Contractor. Approval of the insurance by the State shall not limit, relieve, or decrease the liability of the Contractor hereunder.

If by the terms of any insurance a mandatory deductible is required, or if the Contractor elects to increase the mandatory deductible amount, the Contractor shall be responsible for payment of the amount of the deductible in the event of a paid claim.

**1. WORKERS' COMPENSATION INSURANCE**

The Contractor shall take out and maintain during the life of the contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the contractors' employees to be engaged in work on the project under the contract and, in case any such work is sublet, the Contractor shall require the Subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. This policy shall include a waiver of subrogation in favor of the State. The amounts of such insurance shall not be less than the limits stated hereinafter.

**2. COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE**

The Contractor shall take out and maintain during the life of the contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect Contractor and any

Subcontractor performing work covered by the contract from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under the contract, whether such operation be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

The Commercial General Liability Insurance shall be written on an occurrence basis, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury and Contractual Liability coverage. The policy shall include the State, and others as required by the contract documents, as Additional Insured(s). This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered excess and non-contributory. The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned and Hired vehicles.

### 3. INSURANCE COVERAGE AMOUNTS REQUIRED

WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY	
Coverage A	Statutory
Coverage B	Statutory
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee
COMMERCIAL GENERAL LIABILITY	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 any one person
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Fire Damage	\$50,000 any one fire
Medical Payments	\$5,000 any one person
COMMERCIAL AUTOMOBILE LIABILITY	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
UMBRELLA/EXCESS LIABILITY	
Over Primary Insurance	\$1,000,000 per occurrence
SUBROGATION WAIVER	
"Waiver of Subrogation on the Worker's Compensation in favor of the State of Nebraska."	
LIABILITY WAIVER	
"The State of Nebraska, Certificate holder, is an additionally insured, primary & noncontributory on the General Liability."	

### 4. EVIDENCE OF COVERAGE

The Contractor should furnish the State, with their proposal response, a certificate of insurance coverage complying with the above requirements to the attention of the Buyer at 402-471-2089 (fax)

Administrative Services  
State Purchasing Bureau  
1526 K Street, Suite 130  
Lincoln, NE 68508

These certificates or the cover sheet shall reference the RFP number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration, and amounts and types of coverage afforded. If the State is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.

Notice of cancellation of any required insurance policy must be submitted to Administrative Services State Purchasing Bureau when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

### G. COOPERATION WITH OTHER CONTRACTORS

The State may already have in place or choose to award supplemental contracts for work related to this Request for Proposal, or any portion thereof.

1. The State reserves the right to award the contract jointly between two or more potential Contractors, if such an arrangement is in the best interest of the State.
2. The Contractor shall agree to cooperate with such other Contractors, and shall not commit or permit any act which may interfere with the performance of work by any other Contractor.

**H. INDEPENDENT CONTRACTOR**

It is agreed that nothing contained herein is intended or should be construed in any manner as creating or establishing the relationship of partners between the parties hereto. The Contractor represents that it has, or will secure at its own expense, all personnel required to perform the services under the contract. The Contractor's employees and other persons engaged in work or services required by the Contractor under the contract shall have no contractual relationship with the State; they shall not be considered employees of the State.

All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination against the Contractor, its officers, or its agents) shall in no way be the responsibility of the State. The Contractor will hold the State harmless from any and all such claims. Such personnel or other persons shall not require nor be entitled to any compensation, rights, or benefits from the State including without limit, tenure rights, medical and hospital care, sick and vacation leave, severance pay or retirement benefits.

**I. CONTRACTOR RESPONSIBILITY**

The Contractor is solely responsible for fulfilling the contract, with responsibility for all services offered and products to be delivered as stated in the Request for Proposal, the Contractor's proposal, and the resulting contract. The Contractor shall be the sole point of contact regarding all contractual matters.

If the Contractor intends to utilize any Subcontractor's services, the Subcontractor's level of effort, tasks, and time allocation must be clearly defined in the Contractor's proposal. The Contractor shall agree that it will not utilize any Subcontractors not specifically included in its proposal in the performance of the contract without the prior written authorization of the State. Following execution of the contract, the Contractor shall proceed diligently with all services and shall perform such services with qualified personnel in accordance with the contract.

**J. CONTRACTOR PERSONNEL**

The Contractor warrants that all persons assigned to the project shall be employees of the Contractor or specified Subcontractors or Agents (hereinafter called Personnel), and shall be fully qualified to perform the work required herein. Personnel employed by the Contractor to fulfill the terms of the contract shall remain under the sole direction and control of the Contractor. The Contractor shall include a similar provision in any contract with any Subcontractor or Agent selected to perform work on the project.

The State reserves the right to require the Contractor to reassign or remove from the project any employee of the Contractor, a Subcontractor or an Agent.

In respect to its employees, the Contractor agrees to be responsible for the following:

1. any and all employment taxes and/or other payroll withholding;
2. any and all vehicles used by the Contractor's employees, including all insurance required by state law;
3. damages incurred by the Contractor's employees within the scope of their duties under the contract;
4. maintaining workers' compensation and health insurance and submitting any reports on such insurance to the extent required by governing State law;
5. determining the hours to be worked and the duties to be performed by the Contractor's employees.
6. supervising and directing all work under any Agreement for all Spectrum employees, contractors or agents;
7. the safety of persons performing work under contract with Spectrum in fulfillment of any Agreement to the extent that any safety issues are not caused by the acts or omissions of Customer;
8. acts and/or omissions of its employees, contractors, and agents; and,
9. the condition of the job site used by Spectrum and its agents or contractors to the extent caused by Spectrum or its agents or contractors

**K. STATE OF NEBRASKA PERSONNEL RECRUITMENT PROHIBITION**

The Contractor shall not, at any time, recruit or employ any State employee or agent who has worked on the Request for Proposal or project, or who had any influence on decisions affecting the Request for Proposal or project.

**L. CONFLICT OF INTEREST**

By submitting a proposal, bidder certifies that there does not now exist any relationship between the bidder and any person or entity which is or gives the appearance of a conflict of interest related to this Request for Proposal or project.

The bidder certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder or which creates an actual or appearance of conflict of interest.

The bidder certifies that it will not employ any individual known by bidder to have a conflict of interest.

**M. PROPOSAL PREPARATION COSTS**

The State shall not incur any liability for any costs incurred by bidders in replying to this Request for Proposal, or in any other activity related to bidding on this Request for Proposal.

**N. ERRORS AND OMISSIONS**

The bidder shall not take advantage of any errors and/or omissions in this Request for Proposal or resulting contract. The bidder must promptly notify the State of any errors and/or omissions that are discovered.

Except as otherwise provided herein, the failure of any party to enforce any provision of this contract shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.

**O. BEGINNING OF WORK**

The bidder shall not commence any billable work until a valid contract has been fully executed by the State and the successful Contractor. The Contractor will be notified in writing when work may begin.

**P. DELETED**

**Q. ASSIGNMENT BY THE CONTRACTOR**

The parties may not assign or transfer this Agreement and the associated Service Order(s), or their rights or obligations hereunder to any other entity without first obtaining written consent from the other party, which consent shall not be unreasonably withheld; provided, however, that without the State's consent, Contractor may assign this Agreement and the associated executed Service Order(s) to affiliates controlling, controlled by or under common control with Spectrum, or to its successor-in-interest if Contractor sells some or all of the underlying communications system. Contractor and the successor-in-interest must agree to execute the documents required by the state to amend the contract to reflect the assignment, and the successor-in-interest must agree to assume legal responsibility for performance of the contract as executed by Contractor.

**R. DEVIATIONS FROM THE REQUEST FOR PROPOSAL**

The requirements contained in the Request for Proposal become a part of the terms and conditions of the contract resulting from this Request for Proposal. Any deviations from the Request for Proposal must be clearly defined by the bidder in its proposal and, if accepted by the State, will become part of the contract. Any specifically defined deviations must not be in conflict with the basic nature of the Request for Proposal, mandatory requirements, or applicable state or federal laws or statutes. "Deviation", for the purposes of this RFP, means any proposed changes or alterations to either the contractual language or deliverables within the scope of this RFP. The State discourages deviations and reserves the right to reject proposed deviations.

**S. GOVERNING LAW**

The contract shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the State of Nebraska regarding this Request for Proposal or any resultant contract shall be brought in the State of Nebraska administrative or judicial forums as defined by State law. The Contractor must be in compliance with all Nebraska statutory and regulatory law.

**T. ATTORNEY'S FEES**

In the event of any litigation, appeal, or other legal action to enforce any provision of the contract, the Contractor agrees to pay all expenses of such action, as permitted by law, including attorney's fees and costs, if the State is the prevailing party.

**U. ADVERTISING**

The Contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its services are endorsed or preferred by the State. News releases pertaining to the project shall not be issued without prior written approval from the State.

**V. STATE PROPERTY**

The Contractor shall be responsible for the proper care and custody of any State-owned property which is furnished for the Contractor's use during the performance of the contract. The Contractor shall reimburse the State for any loss or damage of such property; normal wear and tear is expected.

**W. SITE RULES AND REGULATIONS**

The Contractor shall use its best efforts to ensure that its employees, agents, and Subcontractors comply with site rules and regulations while on State premises. If the Contractor must perform on-site work outside of the daily operational hours set forth by the State, it must make arrangements with the State to ensure access to the facility

and the equipment has been arranged. No additional payment will be made by the State on the basis of lack of access, unless the State fails to provide access as agreed to between the State and the Contractor. In the event of service degradation/interruption where site access is required for repair/maintenance, Charter-Spectrum will not be held responsible for delays due to State withholding said access.

**X. NOTIFICATION**

During the bid process, all communication between the State and a bidder shall be between the bidder's representative clearly noted in its proposal and the buyer noted in Section II. A. Procuring Office and Contact Person of this RFP. After the award of the contract, all notices under the contract shall be deemed duly given upon delivery to the staff designated as the point of contact for this Request for Proposal, in person, or upon delivery by U.S. Mail, facsimile, or e-mail. Each bidder should provide in its proposal the name, title, and complete address of its designee to receive notices.

1. Except as otherwise expressly specified herein, all notices, requests, or other communications shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth above, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or three (3) calendar days following deposit in the mail.
2. Whenever the Contractor encounters any difficulty which is delaying or threatens to delay its timely performance under the contract, the Contractor shall immediately give notice thereof in writing to the State reciting all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by the State of any of its rights or remedies to which it is entitled by law or equity or pursuant to the provisions of the contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay.

Either party may change its address for notification purposes by giving notice of the change, and setting forth the new address and an effective date.

For the duration of the contract, all communication between Contractor and the State regarding the contract shall take place between the Contractor and individuals specified by the State in writing. Communication about the contract between Contractor and individuals not designated as points of contact by the State is strictly forbidden.

Any notices to be given under this Addendum shall be validly given or served only if in writing and sent by nationally recognized overnight delivery service or certified mail, return receipt requested, to the following addresses:

If to Charter:  
Charter Communications  
ATTN: Commercial Contracts Management  
Dept: Corp. - Legal Ops  
12405 Powerscourt Drive  
St. Louis, MO 63131

Notices to Customer shall be sent to the Customer billing address.

Each party may change its respective address(es) for legal notice by providing notice to the other party.

**Y. EARLY TERMINATION**

The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract at any time.
2. The State, in its sole discretion, may terminate the contract for any reason upon thirty (30) calendar day's written notice to the Contractor, subject to payment of all outstanding amounts due for services rendered including, but not limited to, any outstanding costs for construction, installation, etc. owed to Contractor as well as the return of any Contractor Equipment. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the contract.
3. The State may terminate the contract immediately for the following reasons:
  - a. If directed to do so by statute;

- b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
- c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
- d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;
- e. an involuntary proceeding has been commenced by any party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;
- f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
- g. Contractor intentionally discloses confidential information;
- h. Contractor has or announces it will discontinue support of the deliverable;
- i. second or subsequent documented "vendor performance report" form deemed acceptable by the State Purchasing Bureau; or
- j. Contractor engaged in collusion or actions which could have provided Contractor an unfair advantage in obtaining this contract.

## **2. FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS**

The State may terminate the contract, in whole or in part, in the event funding is no longer available. The State's obligation to pay amounts due for fiscal years following the current fiscal year is contingent upon legislative appropriation of funds for the contract. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal years for which such funds are not appropriated. The State will give the Contractor written notice thirty (30) calendar days prior to the effective date of any termination, and advise the Contractor of the location (address and room number) of any related equipment. All obligations of the State to make payments after the termination date will cease and all interest of the State in any related equipment will terminate. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

Customer may submit this Service Order and the Agreement to the Schools and Libraries Division of the Universal Service Administrative Company, (i.e., the entity appointed by the Federal Communications Commission to administer the Universal Service Program with respect to Schools and Libraries ("E-Rate") funding) as part of any application seeking a federal subsidy or funding.

Customer is responsible for notifying Spectrum of its election of either the Service Provider Invoice ("SPI") or Billed Entity Applicant Reimbursement ("BEAR") discount method by May 15<sup>th</sup> prior to the applicable funding year. Customer must complete and return an "E-Rate Discount Election Form" to Spectrum prior to such date, or Customer will be deemed to have chosen the BEAR discount method for the funding year.

Upon Spectrum's receipt of appropriate notice that Customer is an approved E-Rate program participant for a Service, Spectrum will invoice Customer for the Service in accordance with E-Rate guidelines and/or rules. If Spectrum invoices Customer for a Service pursuant to any E-Rate program rates, discounts or credits in advance of receiving such notice and Customer's request for E-Rate program funding is denied, limited or reduced, Spectrum will invoice Customer and Customer will pay the difference between such invoiced amount(s) and the actual amount of the charges for the Service as described in this Service Order. Notwithstanding anything herein to the contrary, Customer's obligations under this Service Order shall remain in full force and effect in the event Customer withdraws or is removed from the E-Rate program, receives E-Rate program funding that is less than Customer's requested funding amount, or is denied E-Rate program funding for any Service described in this Service Order. For the avoidance of doubt, Customer is solely responsible for all charges for Services, as described in this Service Order, that were installed prior to the E-rate program funding year start date.

## **AA. BREACH**

The State may terminate the contract, in whole or in part, if the contractor fails to perform its obligations under the contract in a timely and proper manner. The State may, by providing a written notice of default to the Contractor, allow the Contractor to cure a failure or breach of contract within a period of thirty (30) calendar days (or longer at State's discretion considering the gravity and nature of the default). Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing the Contractor time to cure a failure or breach of contract does not waive the State's right to immediately terminate the contract for the same or different contract breach which may occur at a different time. In case of default of the Contractor, the State may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

The State shall be in default under this Agreement if the State does one or more of the following things (each individually to be considered a separate event of default) and the State fails to correct each such noncompliance within 30 days of receipt of written notice:

1. The State is more than 30 days past due with respect to any payment required hereunder;
2. The State otherwise has failed to comply with the terms of this Agreement or any other Service Order(a) incorporated herein.

If The State is in default, for other than non-payment, Charter shall have the right, at its option, without further notice, and in addition to any other rights of Charter expressly set forth in this Agreement and any other remedies it may have under applicable law to:

1. Immediately suspend Services to the State until such time as the underlying noncompliance has been corrected;
2. Terminate the Services, this Agreement or the applicable Service Order(s).

No express or implied waiver by Charter of any event of default shall in any way be a waiver of any further subsequent event of default. Nothing herein, including Termination, shall relieve Customer of its obligation to pay Charter all amounts due for services received.

#### **BB. ASSURANCES BEFORE BREACH**

If any document or deliverable required pursuant to the contract does not fulfill the requirements of the Request for Proposal/resulting contract, upon written notice from the State, the Contractor shall deliver assurances in the form of additional Contractor resources at no additional cost to the project in order to complete the deliverable, and to ensure that other project schedules will not be adversely affected.

#### **CC. ADMINISTRATION – CONTRACT TERMINATION**

1. Contractor must provide confirmation that upon contract termination all deliverables prepared in accordance with this agreement shall become the property of the State of Nebraska subject to the ownership provision (section E) contained herein, and is provided to the State of Nebraska at no additional cost to the State.
2. Contractor must provide confirmation that in the event of contract termination, all records that are the property of the State will be returned to the State within thirty (30) calendar days. Notwithstanding the above, Contractor may retain one copy of any information as required to comply with applicable work product documentation standards or as are automatically retained in the course of Contractor's routine back up procedures.
3. All Equipment and materials installed or provided by Charter are and shall always remain the property of Charter, shall not become a fixture to the Premises, and must be returned to Charter at any time Services are disconnected in the condition in which they were received subject to ordinary wear and tear.

#### **DD. PENALTY**

In the event that the Contractor fails to perform any substantial obligation under the contract, the State may withhold all monies due and payable to the Contractor, without penalty, until such failure is cured or otherwise adjudicated. Failure to meet the dates for the deliverables as agreed upon by the parties may result in an assessment of penalty due the State of \$500.00 dollars per day per circuit or service, until the deliverables are approved. Contractor will be notified in writing when penalty will commence.

The contract expectation is for a service that, at a minimum, will meet required specifications 99.955% of the year - equivalent to a maximum of 4 total hours of downtime/service non-compliance per year. Any service not meeting contract specifications to include violation of QoS parameters will incur a contract performance penalty according to the following formula:

For every hour and fraction of an hour of service violation, the customer will be refunded one day of service credit. Repeated violations of service performance agreements during any single calendar day will be considered a continuous event from the beginning of the original violation until the last violation. Violations on consecutive days will be considered continuous from the initial violation until the service has been restored. The service will be considered restored when no violation has occurred for 24 continuous hours (the 24 hour validation period is not considered part of the penalty). Penalty duration will round up to the next whole hour.

Example: Intermittent connectivity from 9:15a-2:20p on the same day; Duration of the actual service violation would be 5 hours and 5 minutes. Violation assessment is rounded up to the next whole hour, so the duration is considered

as 6 total hours. A yearly downtime credit of 4 hours can be applied to account for the 99.955% performance expectation yielding a 2 hour penalty violation and 2 days of service credit due. The 4 hour credit can only be applied in one hour whole increments with a total of 4 hours of remission during any given calendar year.

**EE. FORCE MAJEURE**

Neither party shall be liable for any costs, inconvenience, loss, liability or damages resulting from any inability to perform its obligations or interruption of Services, directly or indirectly caused by circumstances beyond the Party's control, including but not limited to denial of use of poles or other facilities of a utility company, labor disputes, acts of war or terrorism, criminal, illegal or unlawful acts, natural causes, mechanical or power failures, or any order, law or ordinance in any way restricting the operation of the Services, or a natural disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of the contract. The party so affected shall immediately give notice to the other party of the Force Majeure Event. The other Party may grant relief from performance of the contract if the other Party is prevented from performance by a Force Majeure Event. The burden of proof for the need for such relief shall rest upon the requesting party. To obtain release based on a Force Majeure Event, the Party shall file a written request for such relief with the other Party. Labor disputes and criminal, illegal or unlawful acts of the party or the party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the contract.

**FF. PROHIBITION AGAINST ADVANCE PAYMENT**

Payments shall not be made until contractual deliverable(s) are received and accepted by the State.

**GG. PAYMENT**

State will render payment to Contractor when the terms and conditions of the contract and specifications have been satisfactorily completed on the part of the Contractor as solely determined by the State. Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2401 through 81-2408). The State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any services provided by the Contractor prior to the Effective Date, and the Contractor hereby waives any claim or cause of action for any such services.

**HH. INVOICES**

Invoices for payments must be submitted by the Contractor as described in Section IV. Project 1, M. Billing and Section IV. Project 2, M. Billing, with sufficient detail to support payment. Invoices for the high speed transport service will be issued to the entity being served by such services. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

**II. RIGHT TO AUDIT**

Contractor shall establish and maintain a reasonable accounting system that enables the State to readily audit contract. The State and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this contract kept by or under the control of the Contractor, including, but not limited to those kept by the Contractor, its employees, agents, assigns, successors, and Subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks;; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; and, insurance documents.

Contractor shall, at all times during the term of this contract and for a period of ten (10) years after the completion of this contract for E-Rate documents and five (5) years for other documents, maintain such records, together with such supporting or underlying documents and materials. The Contractor shall at any time requested by the State, whether during or after completion of this contract and at Contractor's own expense make such records available for inspection and audit (including copies and extracts of records as required) by the State. Such records shall be made available to the State during normal business hours at the Contractor's office or place of business. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the State. Contractor shall ensure the State has these rights with Contractor's assigns, successors, and Subcontractors, and the obligations of these rights shall be explicitly included in any Subcontracts or agreements formed between the Contractor and any Subcontractors to the extent that those Subcontracts or agreements relate to fulfillment of the Contractor's obligations to the State.

Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the State unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Contractor to the State in excess of one-half of one percent (.5%) of the total contract billings, the Contractor shall reimburse the State for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the Contractor shall reimburse the State for total costs of audit. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the State's findings to Contractor.

**JJ. TAXES**

The State, as a sovereign entity, is exempt from certain taxes, and shall only be liable for those taxes for which no exemption exists as a matter of law. The State shall provide Contractor with a tax exemption document. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

**KK. INSPECTION AND APPROVAL**

Final inspection and approval of all work required under the contract shall be performed by the designated State officials. The State and/or its authorized representatives shall have the right to enter any premises where the Contractor or Subcontractor duties under the contract are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

**LL. CHANGES IN SCOPE/CHANGE ORDERS**

The State may, upon the written agreement of Contractor, make changes to the contract within the general scope of the RFP. The State may, at any time work is in progress, by written agreement, make alterations in the terms of work as shown in the specifications, require the Contractor to make corrections, decrease the quantity of work, or make such other changes as the State may find necessary or desirable. The Contractor shall not claim forfeiture of contract by reasons of such changes by the State. Changes in work and the amount of compensation to be paid to the Contractor shall be determined in accordance with applicable unit prices if any, or a pro-rated value.

Corrections of any deliverable, service or performance of work required pursuant to the contract shall not be deemed a modification.

Changes or additions to the contract beyond the scope of the RFP are not permitted.

**MM. SEVERABILITY**

If any term or condition of the contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

**NN. CONFIDENTIALITY**

All materials and information provided by the Parties or acquired by the Parties on behalf of the other party shall be regarded as confidential information. All materials and information provided by the Parties or acquired by the Parties on behalf of the other party shall be handled in accordance with federal and state law, and ethical standards. The Parties must ensure the confidentiality of such materials or information. Should said confidentiality be breached by a Party; that Party shall notify the other Party immediately of said breach and take immediate corrective action.

It is incumbent upon the Parties to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable to the Parties by 5 U.S.C. 552a (m)(1), provides that any officer or employee of a Party, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

**OO. PROPRIETARY INFORMATION**

Data contained in the proposal and all documentation provided therein, become the property of the State of Nebraska and the data becomes public information upon opening the proposal. If the bidder wishes to have any information withheld from the public, such information must fall within the definition of proprietary information contained within Nebraska's public record statutes. All proprietary information the bidder wishes the State to withhold must be submitted in a sealed package, which is separate from the remainder of the proposal, and provide supporting documents showing why such documents should be marked proprietary. The separate package must be clearly marked PROPRIETARY on the outside of the package. Bidders may not mark their

entire Request for Proposal as proprietary. Bidder's cost proposals may not be marked as proprietary information. Failure of the bidder to follow the instructions for submitting proprietary and copyrighted information may result in the information being viewed by other bidders and the public. Proprietary information is defined as trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serve no public purpose (see Neb. Rev. Stat. §84-712.05(3)). In accordance with Attorney General Opinions 92068 and 97033, bidders submitting information as proprietary may be required to prove specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive. Although every effort will be made to withhold information that is properly submitted as proprietary and meets the State's definition of proprietary information, the State is under no obligation to maintain the confidentiality of proprietary information and accepts no liability for the release of such information.

**IMPORTANT NOTICE:** Pursuant to Neb. Rev. Stat. §84-602.02, all State contracts in effect as of January 1, 2014 will be posted to a public website beginning July 1, 2014. All non-proprietary or confidential information as defined by State Law **WILL BE POSTED FOR PUBLIC VIEWING.**

**PP. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION/COLLUSIVE BIDDING**

By submission of this proposal, the bidder certifies that it is the party making the foregoing proposal and that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham proposal, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and further that the bidder has not, directly or indirectly, submitted the proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

**QQ. STATEMENT OF NON-COLLUSION**

The proposal shall be arrived at by the bidder independently and be submitted without collusion with, and without any direct or indirect agreement, understanding or planned common course of action with, any person; firm; corporation; bidder; Contractor of materials, supplies, equipment or services described in this RFP. Bidder shall not collude with, or attempt to collude with, any state officials, employees or agents; or evaluators or any person involved in this RFP. The bidder shall not take any action in the restraint of free competition or designed to limit independent bidding or to create an unfair advantage.

Should it be determined that collusion occurred, the State reserves the right to reject a bid or terminate the contract and impose further administrative sanctions.

**RR. PRICES**

All prices, costs, and terms and conditions outlined in the proposal shall remain fixed and valid commencing on the opening date of the proposal until an award is made. Contractor's price for the services provided, as shown in the negotiated Service Contract Award, shall remain fixed for the duration of the contract and shall be invoiced along with the actual cost of applicable fees, taxes and other charges Contractor is obligated to pass-through to the State each month. Non-recurring charges (NRC) shall be invoiced as agreed to in a separate written agreement and in accordance with the original cost sheet. No invoice shall exceed the price contained on the contractor's original cost sheet. If increases to applicable fees, taxes and other charges Contractor is obligated to pass-through to the State will cause the price to exceed the price on the original cost sheet the Contractor may request an increase in price to cover actual increases in fees, taxes and other charges Contractor is obligated to pass-through to the State that exceed the Contractor's price on the original cost sheet. The Contractor must make a showing demonstrating the price increase and that the price exceeds the Contractor prices on the original cost sheet. The State shall have the right to refuse the price increase. No price increase shall be charged or billed until the Contract is amended to reflect the price increase.

Contractor represents and warrants that all prices for services, now or subsequently specified are as low as and no higher than prices which the Contractor has charged or intends to charge customers other than the State for the same or similar products and services of the same or equivalent quantity and quality for delivery or performance during the same periods of time. If, during the term of the contract, the Contractor shall reduce any and/or all prices charged to any customers other than the State for the same or similar products or services specified herein, the Contractor shall make an equal or equivalent reduction in corresponding prices for said specified products or services.

Contractor also represents and warrants that all prices set forth in the contract and all prices in addition, which the Contractor may charge under the terms of the contract, do not and will not violate any existing federal, state, or municipal law or regulations concerning price discrimination and/or price fixing. Contractor agrees to hold the State harmless from any such violation. Prices quoted shall not be subject to increase throughout the contract period unless specifically allowed by these specifications.

**SS. BEST AND FINAL OFFER**

The State will compile the final scores for all parts of each proposal. The award may be granted to the lowest responsible bidder. Alternatively, bidders may be requested to submit best and final offers. If best and final offers are requested by the State and submitted by the bidder, they will be evaluated based on cost. The award will then be granted to the lowest responsible bidder. However, a bidder should provide its best offer in its original proposal. Bidders should not expect that the State will request a best and final offer.

**TT. ETHICS IN PUBLIC CONTRACTING**

No bidder shall pay or offer to pay, either directly or indirectly, any fee, commission compensation, gift, gratuity, or anything of value to any State officer, legislator, employee or evaluator based on the understanding that the receiving person's vote, actions, or judgment will be influenced thereby. No bidder shall give any item of value to any employee of the State Purchasing Bureau or any evaluator.

Bidders shall be prohibited from utilizing the services of lobbyists, attorneys, political activists, or consultants to secure the contract. It is the intent of this provision to assure that the prohibition of state contact during the procurement process is not subverted through the use of lobbyists, attorneys, political activists, or consultants. It is the intent of the State that the process of evaluation of proposals and award of the contract be completed without external influence. It is not the intent of this section to prohibit bidders from seeking professional advice, for example consulting legal counsel, regarding terms and conditions of this Request for Proposal or the format or content of their proposal.

If the bidder is found to be in non-compliance with this section of the Request for Proposal, they may forfeit the contract if awarded to them or be disqualified from the selection process.

**UU. INDEMNIFICATION**

**1. GENERAL**

Spectrum agrees, at its own expense, to indemnify, defend and hold harmless Customer and its affiliates, directors, employees, representatives, officers and agents, (the "Customer Indemnified Parties") against any and all claims, liabilities, lawsuits, direct damages, losses, judgments, costs, fees and expenses incurred by Customer Indemnified Parties (including but not limited to, reasonable attorneys' fees and court costs), to the full extent that such arise directly from (1) Spectrum's failure to comply with applicable law, (2) personal injury or death, or physical damage to personal or real property, caused by the negligent or willful misconduct of Spectrum, its employees or contractors, related to the performance of this Contract. Customer Indemnified Parties shall have the right but not the obligation to participate in the defense of the claim at Spectrum's cost and Spectrum agrees to cooperate with the Customer Indemnified Parties in such case.

The Customer understands that Spectrum disclaims any liability to the full extent that such arises from Customer's misrepresentation with regard to or noncompliance with the terms of this Agreement and/or any Service Order, Customer's failure to comply with applicable law, and/or Customer's negligence or willful misconduct.

**2. PERSONNEL**

The Contractor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel provided by the Contractor.

**3. SELF-INSURANCE**

The State of Nebraska is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2014). If there is a presumed loss under the provisions of this agreement, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 – 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 *et seq.* and under any other provisions of law and accepts liability under this agreement to the extent provided by law. Notwithstanding any other

provision of this contract or any other document, these statutes constitute the Contractor's remedy for presumed loss.

**VV. NEBRASKA TECHNOLOGY ACCESS STANDARDS**

Contractor shall review the Nebraska Technology Access Standards, found at <http://nita.nebraska.gov/standards/2-201.html> and ensure that products and/or services provided under the contract are in compliance or will comply with the applicable standards. In the event such standards change during the Contractor's performance, the State may create an amendment to the contract to request the contract comply with the changed standard at a cost mutually acceptable to the parties.

**WW. ANTITRUST**

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with the contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

**XX. DISASTER RECOVERY/BACK UP PLAN**

The Contractor shall have a disaster recovery and back-up plan. A description of the plan should be provided to the State upon request, which includes, but is not limited to equipment, personnel, facilities, and transportation. In order to continue services as specified under the specifications in the contract in the event of a disaster.

**YY. TIME IS OF THE ESSENCE**

Time is of the essence in the contract. The acceptance of late performance with or without objection or reservation by the State shall not waive any rights of the State nor constitute a waiver of the requirement of timely performance of any obligations on the part of the Contractor remaining to be performed.

**ZZ. RECYCLING**

Preference will be given to items which are manufactured or produced from recycled material or which can be readily reused or recycled after their normal use as per Neb. Rev. Stat. §81-15,159.

**AAA. DRUG POLICY**

Contractor certifies it maintains a drug free work place environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

**BBB. EMPLOYEE WORK ELIGIBILITY STATUS**

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <http://das.nebraska.gov/material/purchasing.html>  
  
The completed United States Attestation Form should be submitted with the Request for Proposal response.
2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

**CCC. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND INELIGIBILITY**

The Contractor, by signature to this RFP, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). The Contractor also agrees to include the above requirements in any and all Subcontracts into which it enters. The Contractor shall immediately notify the Department if, during the term of

this contract, Contractor becomes debarred. The Department may immediately terminate this contract by providing Contractor written notice if Contractor becomes debarred during the term of this contract.

Contractor, by signature to this RFP, certifies that Contractor has not had a contract with the State of Nebraska terminated early by the State of Nebraska. If Contractor has had a contract terminated early by the State of Nebraska, Contractor must provide the contract number, along with an explanation of why the contract was terminated early. Prior early termination may be cause for rejecting the proposal.

**DDD. POLITICAL SUB-DIVISIONS**

The Contractor may extend the contract to political sub-divisions conditioned upon the honoring of the prices charged to the State. Terms and conditions of the Contract must be met by political sub-divisions. Under no circumstances shall the State be contractually obligated or liable for any purchases by political sub-divisions or other public entities not authorized by Neb. Rev. Stat. §81-145, listed as "all officers of the state, departments, bureaus, boards, commissions, councils, and institutions receiving legislative appropriations." A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.

Similar terms of service may be extended to additional state or governmental jurisdictions upon mutual written agreement between the parties.

**EEE. DELETED**

**FFF. DELETED**

**GGG. LICENSE/SERVICE OR OTHER AGREEMENTS**

Any License/Service or other such agreements which the bidder may want the State to consider must be submitted with the bid. Any License/Service or other such agreements submitted to the State post bid opening may result in the bid being rejected in its entirety. Any such agreement, if agreed to by the State, will be considered an addendum to the contract. Any terms and conditions contained in any such accepted agreement (addendum) must not conflict with or alter the State's Terms and Conditions (Terms and Conditions) as contained in the RFP and finalized in the contract. In the event of any conflict between the Terms and Conditions and any addendum the Terms and Conditions will prevail.

The State reserves the right to reject any submitted addendum and considers the submission of any such addendum to be a proposed alteration of the Terms and Conditions. This clause does not apply to any third party license or service agreements.

This Addendum and any attachments hereto will become part of the Contract. Except as set forth in this Addendum, the Contract is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this Addendum and the Contract or any earlier Addendum, the terms of this Addendum will prevail.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date of execution by both parties below.

State of Nebraska

By: 

Name: Bo Botelho

Title: Materiel Administrator

Date: 5/25/16

Contractor: Charter Fiberlink-Nebraska, LLC

By: 

Name: Jill E. Stark  
Vice President Charter Business

Title: \_\_\_\_\_

Date: 5/25/16

## COMMERCIAL TERMS OF SERVICE

1. **AGREEMENT TERM.** This Agreement shall terminate upon the lawful termination of the final existing Service Order entered into under this Agreement.
2. **SERVICE.** Charter shall provide the Services during the Service Period to Customer at the site(s) identified in the Service Order(s). "Service Period" is the time period starting on the date the Services are functional in all material respects and available for use (the "Turn-up Date"), and continuing for the number of months specified in the Service Order(s).
3. **STANDARD PAYMENT TERMS.** Customer shall pay fees and charges for the Services in the amount specified on the Service Order in accordance with this Agreement. A one-time charge ("OTC") is a nonrecurring fee for construction, Service installation charge(s), repair, replacement, or any other nonrecurring costs or charges. "Equipment" means the components (e.g., any gateway or edge electronic device, node, router, switch, communications lines/cables, etc.) that make up the Network. "Network" means all of the physical elements necessary to provide the Services.
  - (a) **Charges.** Customer shall pay all associated charges with the Service(s), as set forth or referenced in the applicable Service Order(s) or invoiced by Charter. These charges may include, but are not limited to a monthly service fee ("MSF"), nonrecurring fees for construction, installation, repair, replacement or other one-time charges ("OTC"), usage charges such as, pay-per-view charges, and applicable federal, state, and local taxes, fees, surcharges and recoupments (however designated). MSFs shall be subject to increases attributable to programming, license, copyright, retransmission and/or other similar costs imposed upon Charter. Charter shall provide not less than thirty (30) days prior notice to Customer of any MSF change.
  - (b) **Taxes, Surcharges, and Fees.** Customer shall pay any sales, use, property, excise or other taxes, franchise fees, and governmental charges (excluding income taxes) arising under this Agreement, in addition to any surcharges that may be imposed as may be permitted under and consistent with applicable law. A copy of Customer's tax exemption document, if applicable, must be provided to Charter to certify tax-exempt status. Tax-exempt status shall not relieve Customer of its obligation to pay any applicable franchise fees. Charter reserves the right from time to time to change the surcharges for Services under this Agreement to reflect the charges or payment obligations imposed on Charter which Charter is permitted or required under applicable law to pass through to Customer (e.g., universal service fund ("USF") charges, franchise fees etc.).
  - (c) **Change Requests.** Any charges associated with Service and Equipment installations, changes, or additions requested by Customer subsequent to executing a Service Order for the applicable site are the sole financial responsibility of Customer. Charter shall notify Customer, in writing, of any additional OTCs and/or adjustments to MSFs associated with or applicable to such Customer change requests prior to making any such additions or modifications. Customer's failure to accept such additional charges within three days of receiving such notice shall be deemed a rejection by Customer, and Charter shall not be liable to perform any work giving rise to such charges. For accepted charges, Customer shall be assessed, through a separate contract, such additional OTCs and/or adjustments of the MSFs either (i) in advance of implementation of the change request or (ii) beginning on Customer's next and/or subsequent invoice(s).
  - (d) **Site Visits and Repairs.** If Customer's misuse, abuse or modification of the Services, Equipment or Network results in a visit to the Customer site for inspection, correction or repair, Charter may charge Customer a site visit fee as well as charges for any resulting Equipment or Network repair or replacement, which may be necessary.
  - (e) **Invoicing Errors.** Customer must provide written notice to Charter of any invoice errors or disputed charges within 30 days of the invoice date on which the errors and/or disputed charges appear for Customer to receive any credit that may be due. Customer must have and present a reasonable basis for disputing any amount charged.
  - (f) **Late Fees.** Undisputed amounts not paid within 30 days of the invoice date shall be past due and subject to a late fee of not more than 1.5% per month or the maximum amount permitted by law.
  - (g) **Non-payment.** If Services are suspended due to late payment, Charter may require that Customer pay all past due charges, a reconnect fee, and one or more MSFs in advance before reconnecting Services.
  - (h) **Collection Fees.** Charter may charge a reasonable service fee for all returned checks and bank card, credit card or other charge card charge-backs. Customer shall be responsible for all expenses, including reasonable attorney fees and collection costs, incurred by Charter in collecting any unpaid amounts due under this Agreement.
  - (i) **Bundled Pricing.** If Customer has selected, through a separate contract, a Spectrum Business Bundle ("SBB") specifically, the following conditions shall apply:
    - i. In consideration for Customer's purchase of all Services in the SBB and only with respect to that period of time during which Customer continues to purchase such SBB, Charter shall apply a discount to the Services ordered under the applicable Service Order(s). Such discount has been applied to the Services included in

Charter's bundled pricing offer and is reflected in the MSF for such Services.

- ii Upon discontinuation or termination by Customer of any component of a Service of the applicable SBB, the pricing for the remaining Services shall revert to Charter's a la carte pricing for such Services in effect at the time. Termination liability applicable to the Services under this Agreement shall otherwise remain unchanged.

#### 4. SERVICE LOCATION ACCESS AND INSTALLATION

- (a) Access. Charter will require reasonable access to each service location listed on a Service Order ("Service Location") as necessary for Charter to review, install, inspect, maintain or repair any Equipment or Materials necessary to provide the Services. If Customer owns or controls the Service Location(s), Customer grants Charter permission to enter the Service Location(s) for the exercise of such right. If a Service Location is not owned and/or controlled by Customer, Customer will obtain, with Charter's assistance, appropriate right of access. If such right of access for Charter is not obtained by either party, then Charter's obligations with respect to such Service Location shall be considered null and void.

- (b) Installation Review; Subsequent Interference. Charter may perform an installation review of each Service Location prior to installation of the Services. Upon request, Customer shall provide Charter with accurate site and/or physical network diagrams or maps of a Service Location, including electrical and other utility service maps, prior to the installation review. If Charter determines that safe installation and/or activation of one or more of the Services will have negative consequences to Charter's personnel or Network or cause technical difficulties to Charter or its customers, Charter may terminate the Service Order effective upon written notice to Customer or may require Customer to correct the situation before proceeding with installation or activation of the Services.

If during a Service Period, or any renewal thereof, (i) proper operation of Equipment or provision of a Service is no longer unhindered or possible as a result of interference or obstruction due to any cause other than Charter or (ii) such interference/obstruction or its cause may endanger, hinder, harm or injure Charter's personnel or Network and/or cause technical difficulties to Charter or its customers, Charter may terminate the affected Service Order(s) without liability upon written notice to Customer.

- (c) Site Preparation. Customer shall be responsible for necessary preparations at its location(s) for delivery and installation of Equipment and the installation and ongoing provision of Services, including the relocation of Customer's equipment, furniture and furnishings as necessary to access the Equipment or Services. Upon request, Customer shall provide any available electrical, utility service, and/or general physical network diagrams or maps prior to installation or maintenance work to be undertaken by Charter.

- (d) Installation. Charter will schedule one or more installation visits with Customer. Customer's authorized representative must be present during installation. If during the course of installation Charter determines additional work is necessary to enable Charter to deliver the Services to the Service Location, Charter will notify Customer of any additional OTCs. If Customer does not agree to pay such OTCs by executing a revised Service Order within five business days of receiving the same, Customer and Charter shall each have the right to terminate the applicable Service Order. Customer shall connect Customer's computer or network to applicable Charter-provided Equipment to enable access to the Services. Charter shall be responsible for reasonable restoration efforts necessary to address any displacement resulting from excavation.

- (e) Ongoing Visits. Charter will need periodic access for inspection, operation and maintenance of the Network. Except in emergency situations, Charter will obtain approval from Customer (not to be unreasonably withheld or delayed) before entering Customer Premises. At Charter's request, Customer, or a representative designated by Customer, will accompany Charter's employees or agents into any unoccupied unit for any purpose relating to the Equipment.

#### 5. EQUIPMENT AND MATERIALS.

- (a) Responsibilities and Safeguards. Except as otherwise provided in this Agreement or any Service Order(s), neither party shall be responsible for the maintenance or repair of cable, electronics, structures, Equipment or materials owned by the other party; provided, however, that subject to the indemnification limitations set forth in this Agreement, each party shall be responsible to the other for any physical damage or harm such party causes to the other party's personal or real property through the damage -causing party's negligence or willful misconduct. Customer shall:

- i. Safeguard Equipment against others;
- ii. Not add other equipment nor move, modify, disturb, alter, remove, nor otherwise tamper with any portion of the Equipment;
- iii. Not hire nor permit anyone other than personnel authorized by Charter acting in their official capacity to perform any work on Equipment; and
- iv. Not move nor relocate Equipment to another location or use it at an address other than the Service location without the prior written consent of Charter.

Any unauthorized connection or other tampering with the Services or Equipment shall be cause for immediate suspension of Services, termination of this Agreement and/or legal action, and Charter shall be entitled to recover damages, including the value of any Services and/or Equipment obtained in violation of this Agreement in addition to reasonable collection costs including reasonable attorney fees. Should any antenna, or signal

amplification system for use in connection with communication equipment hereafter be installed on the Premises which interferes with the Services, Charter shall not be obligated to distribute a signal to the Premises better than the highest quality which can be furnished without additional cost to Charter as a result of such interference, until such time as the interference is eliminated.

- (b) Customer Security Responsibilities. Customer shall be responsible for the implementation of reasonable security measures and procedures with respect to use of and access to the Service and/or Equipment. Charter may suspend the Services upon learning of a breach of security and will attempt to contact Customer in advance, if practicable.
  - (c) Ownership. Notwithstanding any other provision contained in this Agreement to the contrary, all Equipment and materials installed or provided by Charter are and shall always remain the property of Charter, shall not become a fixture to the Premises, and must be returned to Charter at any time Services are disconnected in the condition in which they were received subject to ordinary wear and tear. Customer will not sell, lease, assign nor encumber any Equipment. Customer shall not obtain or acquire title to, interest or right (including intellectual property rights) in the Service or Equipment other than to the limited extent of use rights expressly granted under this Agreement.
  - (d) Equipment Return, Retrieval, Repair and Replacement. Immediately upon termination of this Agreement and/or Service Order(s) ("Termination"), at the discretion of Charter, Customer shall return, or allow Charter to retrieve, the Equipment supplied by Charter to Customer. Failure of Customer to return, or allow Charter to retrieve, Equipment within 10 days after Services are terminated will result in a charge to Customer's account equal to the retail cost of replacement of the unreturned Equipment. Customer shall pay for the repair or replacement of any damaged Equipment, except such repairs or replacements as may be necessary due to normal and ordinary wear and tear or material/workmanship defects, together with any costs incurred by Charter in obtaining or attempting to regain possession of such Equipment, including reasonable attorney fees.
6. **ADMINISTRATIVE WEB SITE**. Charter may, at its sole option, make one or more administrative web sites available to Customer in connection with Customer's use of the Services (each an "Administrative Web Site"). Charter may furnish Customer with one or more user identifications and/or passwords for use on the Administrative Web Site. Customer shall be responsible for the confidentiality and use of such user identifications and/or passwords and shall immediately notify Charter if there has been an unauthorized release, use or other compromise of any user identification or password. In addition, Customer agrees that its authorized users shall keep confidential and not distribute any information or other materials made available by the Administrative Web

Site. Customer shall be solely responsible for all use of the Administrative Web Site, and Charter shall only be entitled to rely on all Customer uses of and submission to the Administrative Web Site as authorized by Customer. Charter shall not be liable for any loss, cost, expense of other liability arising out of any Customer use of the Administrative Web Site. Charter may change or discontinue the Administrative Web Site, or Customer's right to use the Administrative Web Site, at any time. Additional terms and policies may apply to Customer's use of the Administrative Web Site. These terms and policies will be posted on the site.

7. **VIDEO, MUSIC AND CONTENT SERVICE**. (Through a separate contract) This Video, Music and Content Service Section shall only apply if Video, Music and Content Services are included in a Service Order under this Agreement; however, continued use or reception of the Video Services is subject to the provisions of this Agreement.
- (a) Music Rights Fees. Customer is responsible for and must secure any music rights and/or pay applicable fees required by the American Society of Composers, Authors & Publishers (ASCAP), Broadcast Music, Inc. (BMI) and SESAC, Inc. (SESAC) or their respective successors, and any other entity, person or governmental authority from which a license is necessary or appropriate relating to Customer's transmission, retransmission, communication, distribution, performance or other use of the Services.
  - (b) Premium and Pay-Per-View. Customer may not: (i) exhibit any premium Services such as HBO or Showtime in any public or common area; (ii) order or request Pay-Per-View (PPV) programming for receipt, exhibition or taping in a commercial establishment; or (iii) exhibit nor assist in the exhibition of PPV programming in a commercial establishment unless explicitly authorized to do so by agreement with an authorized program provider and subject to Charter's prior written consent.
  - (c) HD Formatted Programming. If Customer has selected High Definition ("HD") formatted programming, Customer is responsible for provision, installation and maintenance of the receiving equipment and/or facilities necessary for its reception and display. Any failure of Customer to fulfill the foregoing obligation shall not relieve Customer of its obligation to pay the applicable MSFs or OTCs for the HD formatted programming.
  - (d) Provision of Service. Without notice, Charter may preempt, rearrange, delete, add, discontinue, modify or otherwise change any or all of the advertised programming comprising, packaging of, line-up applicable to, and/or distribution of its Video Services.
  - (e) Restrictions. Customer shall not and shall not authorize or permit any other person to (i) copy, record, dub, duplicate, alter, make or manufacture any recordings or other reproductions of the Services (or any part thereof); or (ii) transmit the Services by any television or radio broadcast or by any other means or use the Services outside the Service Location. Customer acknowledges that such

duplication, reproduction or transmission may subject Customer to criminal penalties and/or civil liability and damages under applicable copyright and/or trademark laws. With respect to the music programming comprising a portion of the Services, Customer shall not, and shall not authorize or permit any other person to, do any of the following unless Customer has obtained a then-current music license permitting such activity: (i) charge a cover charge or admission fee to any Service Location(s) at the time the Services are being performed or are to be performed; (ii) permit dancing, skating or other similar forms of entertainment or physical activity in conjunction with the performance of the Services; or (iii) insert any commercial announcements into the Services or interrupt any performance of the Services for the making of any commercial announcements.

**8. INTERNET ACCESS SERVICE.** (Through a separate contract) This Internet Access Service Section shall only apply if Internet Access Services are included in a Service Order under this Agreement; however, continued use of the Internet Service shall be subject to the provisions of this Agreement.

(a) Customer shall (i) maintain certain minimum equipment and software to receive the Service (see [www.business.spectrum.com](http://www.business.spectrum.com) (or the applicable successor URL) for the current specifications); (ii) ensure that any person who has access to the Internet Services through Customer's computer(s), Service Location, facilities or account shall comply with the terms of this Agreement, (iii) be responsible for all charges incurred and all conduct, whether authorized or unauthorized, caused by use of Customer's computers, service locations, facilities or account using the Internet Services.

(b) Internet Service Speeds. Charter shall use commercially reasonable efforts to achieve the Internet speed selected by Customer on the Service Order, however, actual Internet speeds may vary. Many factors affect speed including, without limitation, the number of workstations using a single connection.

(c) Electronic Addresses. All e-mail addresses, e-mail account names, and IP addresses ("Electronic Addresses") provided by Charter are the property of Charter. Customer may not alter, modify, sell, lease, assign, encumber or otherwise tamper with the Electronic Addresses.

(d) Changes of Address. Charter may change addressing schemes, including e-mail and IP addresses.

(e) No Liability for Risks of Internet Use. The Service, Charter's network and the Internet are not secure, and others may access or monitor traffic.

(f) No Liability for Purchases. Customer shall be solely liable and responsible for all fees or charges for online services, products or information. Charter shall have no responsibility to resolve disputes with other vendors.

(g) Blocking and Filtering. Customer assumes all responsibility for providing and configuring any "firewall" or

security measures for use with the Service. Except to the extent set forth in the Supplemental Spectrum Business Security Service Section, Charter shall not be responsible in any manner for the effectiveness of these blocking and filtering technologies. Charter does not warrant that others will be unable to gain access to Customer's computer(s) and/or data even if Customer utilizes blocking and filtering technologies, nor does Charter warrant that the data or files will be free from computer viruses or other harmful components. Charter has no responsibility and assumes no liability for such acts or occurrences.

(h) Acceptable Use Policy. Customer shall comply with the terms of Charter's Acceptable Use Policy ("AUP") found at [www.business.spectrum.com](http://www.business.spectrum.com) (or the applicable successor URL) and that policy is incorporated by reference into this Agreement. Customer represents and warrants that Customer has read the AUP and shall be bound by its terms as they may be amended, revised, replaced, supplemented or otherwise changed from time-to-time by Charter with or without notice to Customer. Charter may suspend Service immediately for any violation of the Charter AUP.

**9. SUPPLEMENTAL SERVICES.** (Through a separate contract) The following Subsections shall only apply in the event the referenced supplemental service has been selected by and are being delivered to Customer. The supplemental services (also "Services") may be made up of software and hardware components. Charter shall ensure the supplemental services are operational and updated from time-to-time based on manufacturer-sent updates. Except to the limited extent described in the foregoing sentence, Charter makes no warranties of any kind (express or implied) regarding the supplemental services and hereby disclaims any and all warranties pertaining thereto (including implied warranties of title, noninfringement, merchantability, and fitness for a particular purpose). Charter does not have title to and is not the manufacturer of any software or hardware components of the supplemental services nor is Charter the supplier of any components of such software or hardware. Customer shall return or destroy all software components provided to Customer upon the termination of the applicable Service Order, and in the case of the destruction thereof, shall, upon request, provide Charter with certification that such components have been destroyed. **IN NO EVENT SHALL CHARTER BE LIABLE FOR ANY DAMAGES ARISING FROM THE PERFORMANCE OR NONPERFORMANCE OF ANY SUPPLEMENTAL SERVICES.**

(a) Hosting. This Hosting Service subsection shall only apply if one of Charter's Hosting Services ("Hosting") is included as part of the Service in a Service Order under this Agreement. Charter will provide to Customer Hosting Service in accordance with the specifications associated with the plan Customer has selected on the Service Order.

i. Hosting Software. The Hosting Service will permit access to a variety of resources available from selected third parties, including developer

- tools, communication forums and product information (collectively, "Hosting Software"). The Hosting Software, including any updates, enhancements, new features, and/or the addition of any new Web properties, may be subject to and Customer shall comply with applicable product use rights/end user license agreements between such third parties and Customer. Without abrogating or limiting anything set forth in the Sections: Internet Access Service, this Section, No Third-Party Support, Customer Use or Performance, Charter (not the manufacturer) shall provide technical support for Hosting Service, but version changes of any such software compatibility and/or suitability with any other Customer provided software shall be Customer's responsibility. Customer hereby consents to the disclosure to the provider of Third Party Software, of Customer's name and any other necessary information for the limited purpose of licensing rights. Customer shall not use Hosting Service for or in connection with any high risk use or activity such as aircraft or other modes of human mass transportation, nuclear, or chemical facilities, or Class III medical devices under the Federal Food, Drug, and Cosmetic Act. **COPYING OR REPRODUCTION OF THE HOSTING SOFTWARE TO ANY OTHER SERVER OR LOCATION FOR FURTHER REPRODUCTION OR REDISTRIBUTION IS EXPRESSLY PROHIBITED, UNLESS APPROVED IN WRITING BY CHARTER.**
- ii. Domain Names. Customer shall be solely responsible for registering for or renewing a desired domain name. Charter does not guarantee that Customer will be able to register or renew a desired domain name.
  - iii. Specification Limitations. Individual websites may not at any time exceed the Hosting specifications identified on the applicable Service Order. If Customer's Hosting account exceeds the applicable specifications or is adversely impacting Charter's network or server(s), Charter may (i) contact Customer to resolve the issues; or (ii) if Customer has exceeded the then-applicable specifications in any given month, upgrade account on the next available billing cycle to the next service level tier or suspend or terminate the Hosting Service.  
  
Notwithstanding anything to the contrary, if Customer's use of the Hosting Service is causing an adverse impact on Charter's network or servers, Charter may suspend or terminate the Hosting Service without notice.
  - iv. Limitation of Charter-provided Services. Certain services are not provided by Charter as part of the Hosting Service (e.g., Charter does not

provide nor offer webpage creation, development, design or content services).

- v. Hosting Fees. The applicable Service Order sets forth the MSFs for the Hosting Service. Customer is responsible for payment whether or not the hosting platform is used and whether or not it functions properly, unless such failure is caused by Charter.
- vi. Content Liability and Use Restrictions. Charter exercises no control over the content of the information passing through Customer's site(s) and it is Customer's sole responsibility to ensure that Customer and Customer's users use of the Hosting Service complies at all times with all applicable laws and regulations and the AUP. Charter shall have the right to disclose any and all available information collected from Customer to law enforcement authorities upon written request by such authorities. Information that may be disclosed includes IP addresses, account history, and files stored on servers used to provide the Hosting Service. If Customer engages in any of the following prohibited activities, Charter shall have the right to suspend or terminate the Hosting Services and/or this Agreement:
  1. The hosting of unlicensed software.
  2. Use of software or files that contain computer viruses or files that may harm user's computers;
  3. Any attempt or actual unauthorized access by Customer or through Customer's equipment to any Charter website or the website of any Charter customer;
  4. The collection or any attempt to collect personally identifiable information of any person or entity without his, her or its express written consent. Customer shall maintain records of any such written consent throughout the term of this Agreement and for three years thereafter;
  5. Any action or inaction which is harmful or potentially harmful to the Charter server structure;
  6. Running a banner exchange, free adult thumbnail gallery post and/or free adult image galleries on your website; or
  7. Inclusion of sites with material, links, or resources for hacking, phreaking, viruses, or any type of site that promotes or participates in willful harm to Internet sites, users or providers.
- vii. Impositions on Customer's End Users. Customer is responsible for charging and collecting from its end users any and all applicable taxes. If Customer fails to impose and/or collect any tax from its end users then, as between Charter and Customer, Customer shall be liable for such

uncollected tax and any interest and penalty assessed thereon with respect to the uncollected tax. Customer shall indemnify and hold the Charter Indemnified Parties (defined below) harmless for any costs incurred or taxes or fees paid due to actions taken by the applicable taxing authority to collect any such tax from Charter due to Customer's failure to comply with this Section.

- (b) **SB Security Service – Desktop and Managed.** Charter's managed security service, SB Managed Security, and desktop security service, SB Desktop Security (collectively, "SB Security Service") are each made up of software and hardware components. Charter shall ensure that the selected SB Security Service(s) is/are operational and updated from time-to-time based on manufacturer-sent updates. Charter is not the manufacturer of any software or hardware components of either Spectrum Business Security Service nor is Charter the supplier of any components of such software or hardware.
- (c) **SB Back-Up Service.** For Charter's data storage service ("SB Back-up"), Customer shall be assessed applicable OTCs and MSFs which shall be based upon Customer's selection of version retention quantity and storage tier (e.g., five gigabits). The version retention quantity selected specifies the maximum number of separate versions of a document that will be retained (running in sequential order based on the last version created). For example, if Customer has selected "seven" as the version retention quantity, Customer will be able to access the last seven versions of a particular document. In addition to OTCs and MSFs, monthly storage overage fees shall apply each month Customer exceeds the respective subscribed storage level. Additional OTCs and MSFs also apply to Customer-requested media and/or professional services.

Charter is not the manufacturer or supplier of any SB Back-Up software components. Customer shall be responsible for updating SB Back-Up from time-to-time based on updates provided by the software manufacturer, and any failure of Customer to perform such updates shall relieve Charter from any responsibility to ensure that SB Back-Up remains operational.

If the functionality of SB Back-Up cannot be maintained by Charter, Charter shall have the right to discontinue providing the Service immediately and Charter shall credit Customer's account for any pre-paid MSFs attributable to the Service, except where such lack of functionality is caused by Customer or any end user gaining access to the Service through Customer's facilities, equipment, or point of access. Customer shall not be relieved of its responsibility to continue to pay for SB Back-Up in the event SB Back-Up does not function properly as a result of Customer's failure to install and configure the software, activate the service or install manufacturer-provided updates.

CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT (1) IT IS CUSTOMER'S SOLE RESPONSIBILITY TO CREATE AND RETAIN THE SB BACK-UP PASSWORD THAT IS NECESSARY FOR ACCESS TO ANY DATA STORED VIA THE SB BACK-

UP SERVICE AND (2) CHARTER HAS NO ACCESS TO AND DOES NOT KNOW NOR KEEP ANY RECORD OF THE PASSWORD CREATED BY CUSTOMER. FAILURE BY CUSTOMER TO RETAIN CUSTOMER'S SB BACK-UP PASSWORD SHALL RESULT IN COMPLETE LOSS OF ACCESSIBILITY TO DATA STORED VIA SB BACK-UP.

**10. DATA NETWORKING (aka "DATA TRANSPORT").**

Charter will provide Data Networking Services for Customer locations connected over coaxial and/or fiber-optic cable. Connectivity is established between two or more customer end-points under a unique customer topology. Charter will install the coaxial or fiber-optic cable into each Customer site as listed in the Service Order(s). Charter will also supply an edge device at each site that will be capable of receiving the Service as specified in the Service Order(s).

- i. Charter will terminate fiber-optic cable on a patch panel or provide a coaxial outlet at an agreed upon minimum point of penetration (MPOP) up to 50 feet within each facility (unless otherwise specified in the Service Order). If the hand-off point of the Data Networking Service at Customer's premise exceeds this distance, Customer may be responsible for any additional costs for internal wiring.
- ii. Customer will make available to Charter a building ground connection at each location that meets current electrical codes for the placement of a fiber-optic patch panel and/or coaxial outlet. Unless otherwise specified in the applicable Service Order, it is recommended that Customer provide a separate 20 Amp 110V AC circuit for the edge electronics, which is powered by a UPS system. Customer-supplied routing will be necessary for communication between each Service Location.
- iii. If Customer has selected "Monitoring" for a Service, Charter shall monitor the Services 24 hours a day, seven days a week. Customer shall contact the Enterprise and Strategic Marketing Network Operations Center at 1-866-603-3199 or subsequent number to report Data Networking Service problems. Additional fees may apply for Monitoring over coaxial cable.
- iv. In the event Customer is receiving Data Networking Services: Optical Ethernet EP-LAN or EVP-LAN, Charter recommends that the Customer place a router at each ingress/egress point (on Customer's side of the demarcation), which will reduce the number of customer media access control ("MAC") addresses which must be learned by Charter's network (aka 'masking') in order to be conveyed. In the event Customer chooses not to place a router on its side of the demarcation, Charter will place limitations on the number of MAC addresses that will be learned by Charter's network and, in circumstances where the customer exceeds these limitations, some Customer network traffic will be denied from entering Charter's network. Additional monthly fees will be applied if the number of MAC addresses on a given EVC (Ethernet Virtual Connection) exceeds 500.

and Charter will not allow more than 1000 MAC addresses onto the network.

**11. NO THIRD-PARTY HARDWARE OR SOFTWARE SUPPORT.** Customer is responsible for the installation, repair and use of Customer-supplied third-party hardware and/or software. For purposes of this Agreement the Hosting Software shall be considered third party software. Charter does not support third-party hardware or software supplied by Customer. Any questions concerning third-party hardware or software should be directed to the provider of that product. Charter assumes no liability or responsibility for the installation, maintenance, compatibility or performance of third party software, any Customer-supplied hardware or software with the Services. If such third-party equipment or software impairs the Services, Customer shall remain liable for payments as agreed (if any) without recourse for credit or prorated refund for the period of impairment. Charter has no responsibility to resolve the difficulties caused by such third-party equipment or software. If, at Customer's request, Charter should attempt to resolve difficulties caused by such third-party equipment or software, such efforts shall be performed at Charter's discretion and at then-current commercial rates and terms.

**12. CUSTOMER USE.** Customer shall not re-sell or re-distribute access to the Service(s) or system capacity, or any part thereof, in any manner without the express prior written consent of Charter. Customer shall not use or permit third parties to use the Service(s), including the Equipment and software provided by Charter, for any illegal purpose, or to achieve unauthorized access to any computer systems, software, data, or other copyright or patent protected material. Customer shall not interfere with other customers' use of the Equipment or Services or disrupt the Charter Network, backbone, nodes or other Services. Violation of any part of this Section is grounds for immediate Termination of this Agreement and/or all Service Orders in addition to any other rights or remedies Charter may have.

**13. PERFORMANCE.** Charter will use commercially reasonable efforts in keeping with normal industry standards to ensure that the Service is available to Customer 24 hours per day, seven days per week. It is possible, however, that there will be interruptions of Service. The Service may be unavailable from time-to-time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond Charter's reasonable control. Temporary service interruptions/outages for such reasons, as well as service interruptions/outages caused by Customer, its agents and employees, or by a Force Majeure Event, shall not constitute a failure by Charter to perform its obligations under this Agreement, and Customer will not hold Charter at fault for loss of Customer revenue or lost employee productivity due to Service outages.

**14. DEFAULT; SUSPENSION OF SERVICE; TERMINATION.** No express or implied waiver by Charter of any event of noncompliance shall in any way be a

waiver of any further subsequent event of noncompliance. Nothing herein, including Termination, shall relieve Customer of its obligation to pay Charter all amounts due.

(a) **Default by Customer.** Customer shall be in default under this Agreement if Customer does one or more of the following things (each individually to be considered a separate event of default) and Customer fails to correct each such noncompliance within 30 days of receipt of written notice ("Default"):

- i. Customer is more than 30 days past due with respect to any payment required hereunder;
- ii. Customer otherwise has failed to comply with the terms of this Agreement or any other Service Order(s) incorporated herein.

(b) **Termination for Convenience.** Notwithstanding any other term or provision in this Agreement, Customer shall have the right to terminate a Service Order, or this Agreement in whole or part, at any time upon thirty (30) days prior written notice to Charter, and subject to payment of all outstanding amounts due, any applicable Termination Charges, and the return of any Charter Equipment.

(c) **Charter's Right to Terminate and Termination Charge.** If Customer is in Default, Charter shall have the right, at its option, without prior notice, and in addition to any other rights of Charter expressly set forth in this Agreement and any other remedies it may have under applicable law to:

- i. Immediately suspend Services to Customer until such time as the underlying noncompliance has been corrected without affecting Customer's on-going obligation to pay Charter any amounts due under this Agreement (e.g., the MSFs) as if such suspension of Services had not taken place;
- ii. Terminate the Services, this Agreement or the applicable Service Order(s).

If Termination is due to Customer's Default or is elected/done by Customer for convenience, Customer must pay Charter a Termination charge (a "**Termination Charge**"), which the parties recognize as liquidated damages. This Termination Charge shall be equal to 50% of the unpaid balance of the MSFs that would have been due throughout the applicable Service Period plus 100% of (1) the outstanding balance of any and all OTCs plus (2) any and all previously waived OTCs.

(d) **Default by Charter.** Charter shall be in default under this Agreement if Charter fails to comply with the terms of this Agreement and/or any or all of the applicable Service Order(s), and Charter fails to remedy each such noncompliance or occurrence within 30 days of receipt of written notice from Customer describing in reasonable detail the nature, scope and extent of the default or noncompliance ("Charter Default").

(e) **Customer's Right to Terminate and Termination Charge.**

- i. In the event Customer wishes to terminate a Service without cause, Customer shall be liable for the same Termination Charges as described above.
- ii. Customer shall have the right, at its option and in addition to any other remedies it may have, to terminate any applicable Service Order(s), if the underlying event of Charter Default by Charter is limited to Services provided under the applicable Service Order(s) or this Agreement, if such Charter Default is not so limited.
- iii. If Termination is due to a Charter Default, Charter shall reimburse Customer for any pre-paid, unused MSFs attributable to such terminated Service Order(s). In addition, if Termination is due to Charter Default within one year of the applicable Turn-Up Date, Charter shall pay a Termination Charge, which the parties recognize as liquidated damages, equal to a portion of any OTC that has already been paid by Customer to Charter relative to Service at the sites covered by the terminated Service Order. This Termination Charge shall be equal to the product of a) the number of months (including partial months) remaining in the initial 12 months of the Initial Service Period at the time of Termination and b) a ratio in which the numerator is the total of OTCs paid to date and the denominator is 12.

**15. LIMITATION OF LIABILITY. PLEASE READ THIS SECTION CAREFULLY, IT CONTAINS DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY.**

- (a) Limited Warranty. At all times during the Service Period, Charter warrants that it will use commercially reasonable efforts in keeping with industry standards to cause the Services to be available to Customer. Charter does not warrant that Services will be error free.

THE FOREGOING LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL EXPRESS AND IMPLIED WARRANTIES WHATSOEVER.

EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT, CHARTER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE AND SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

WITHOUT LIMITING ANY EXPRESS PROVISIONS OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL RELIANCE OR PUNITIVE DAMAGES (INCLUDING LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES, INCLUDING ANY SERVICE IMPLEMENTATION DELAYS AND/OR FAILURES, UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN

ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. CHARTER'S MAXIMUM LIABILITY TO CUSTOMER WITH REGARD TO ANY SERVICE SHALL NOT EXCEED THE AMOUNT, EXCLUDING OTCs, PAID OR PAYABLE BY CUSTOMER TO CHARTER FOR THE APPLICABLE SERVICE IN THE THREE MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM.

Any warranty claim by Customer must be made within 30 days after the applicable Services have been performed. Charter's sole obligation and Customer's sole remedy, with respect to any breach of the limited warranty set forth herein, shall be a prorated refund of the fees paid by Customer based on the period of time when the Services are out of compliance with this limited warranty provision.

- (b) Content. Any content that Customer may access or transmit through any Service is provided by independent content providers, over which Charter does not exercise and disclaims any control. Charter neither previews content nor exercises editorial control; does not endorse any opinions or information accessed through any Service; and assumes no responsibility for content. Charter specifically disclaims any responsibility for the accuracy or quality of the information obtained using the Service. Such content or programs may include programs or content of an infringing, abusive, profane or sexually offensive nature. Customer and its authorized users accessing other parties' content through Customer's facilities do so at Customer's own risk, and Charter assumes no liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such content.
- (c) Damage, Loss or Destruction of Software Files and/or Data. Customer uses the Services and Equipment supplied by Charter at its sole risk. Charter does not manufacture the Equipment, and the Services and Equipment are provided on an "as is basis" without warranties of any kind. Charter assumes no responsibility whatsoever for any damage to or loss or destruction of any of Customer's hardware, software, files, data or peripherals which may result from Customer's use of any Service. Charter does not warrant that data or files sent by or to Customer will be transmitted in uncorrupted form or within a reasonable period of time.
- (d) Unauthorized Access. If Customer chooses to run or offer access to applications from its equipment that permits others to gain access through the Network, Customer must take appropriate security measures. Failing to do so may cause immediate termination of Customer's Service by Charter without liability for Charter. Charter is not responsible for and assumes no liability for any damages resulting from the use of such applications, and Customer shall hold harmless and indemnify the Charter (indemnified Parties) from and against any claims, losses, or damages arising from such use. Charter is not responsible and assumes no liability for losses, claims, damages, expenses, liability, or costs resulting from others

accessing Customer's computers, its internal network and/or the Network through Customer's equipment.

- (e) **Force Majeure Event.** Neither Party shall be liable to the other for any delay, inconvenience, loss, liability or damage resulting from any failure or interruption of Services, directly or indirectly caused by circumstances beyond such party's control, including but not limited to denial of use of poles or other facilities of a utility company, labor disputes, acts of war or terrorism, criminal, illegal or unlawful acts, natural causes, mechanical or power failures, or any order, law or ordinance in any way restricting the operation of the Services. Changes in economic, business or competitive condition shall not be considered a Force Majeure Event.

16. **INDEMNIFICATION.** In addition to its specific indemnification responsibilities set forth elsewhere in this Agreement and as permissible under applicable law, Customer at its own expense, shall indemnify, defend and hold harmless Charter and its directors, employees, representatives, officers and agents, (the "Indemnified Parties") against any and all claims, liabilities, lawsuits, damages, losses, judgments, costs, fees and expenses incurred by Charter Indemnified Parties, including reasonable attorney fees and court costs incurred by Charter Indemnified Parties under this Agreement, to the full extent that such arise from Customer's misrepresentation with regard to or noncompliance with the terms of this Agreement and any or all Service Orders, Customer's failure to comply with applicable law, and/or Customer's negligence or willful misconduct. Charter Indemnified Parties shall have the right but not the obligation to participate in the defense of the claim at Customer's cost and Customer shall cooperate with Charter Indemnified Parties in such case.

17. **TITLE.** Title to the Equipment shall remain with Charter during the applicable Service Period. Customer shall keep that portion of the Equipment located on Customer premises free and clear of all liens, encumbrances and security interests. Upon termination of Service or expiration of a Service Order's Service Period for a specific site, Charter shall have the right to remove all Equipment components and/or leave any of such components in place, assigning title and interest in such components to Customer, it being understood that no further notice or action is required to accomplish the assignment contemplated hereunder. Charter shall have the right to remove the Equipment and all components within 60 days after such termination.

18. **COMPLIANCE WITH LAWS.** Customer shall not use or permit third parties to use the Services in any manner that violates applicable law or causes Charter to violate applicable law. Both parties shall comply with all applicable laws and regulations when carrying out their respective duties hereunder.

19. **PRIVACY.** Charter treats private communications on or through its Network or using any Service as confidential and does not access, use or disclose the contents of private communications, except in limited circumstances

and as permitted by law. Charter also maintains a Privacy Policy with respect to the Services in order to protect the privacy of its customers. The Privacy Policy may be found on Charter's website at [www.business.spectrum.com](http://www.business.spectrum.com). The Privacy Policy may be updated or modified from time-to-time by Charter, with or without notice to Customer.

20. **GENERAL CUSTOMER REPRESENTATIONS AND OBLIGATIONS.** Customer represents to Charter (a) that Customer has the authority to execute, deliver and carry out the terms of this Agreement and associated Service Orders and (b) that any person who accesses any Services through Customer's equipment or through the Network facilities in Customer's Premises will be an authorized user, will use the Service, Network and/or Network facilities in an appropriate and legal manner, and will be subject to the terms of this Agreement. Customer is responsible for ensuring its users of the Service comply with the terms of this Agreement. Customer shall be responsible for all access to and use of the Service by means of Customer's equipment, whether or not Customer has knowledge of or authorizes such access or use. Customer shall be solely liable and responsible for all charges incurred and all conduct through either authorized or unauthorized use of the Service, until informs Charter of any breach of security.

21. A1. Any notices to be given under this Agreement shall be validly given or served only if in writing and sent by nationally recognized overnight delivery service or certified mail, return receipt requested, to the following addresses:

If to Charter:  
Charter Communications  
ATTN: Commercial Contracts Management  
Dept: Corp. - Legal Ops  
12405 Powerscourt Drive  
St. Louis, MO 63131

Notices to Customer shall be sent to the Customer billing address.

Each party may change its respective address (es) for legal notice by providing notice to the other party.

22. **MISCELLANEOUS.**

- (a) **No Amendments, Supplements or Changes.** Except for pricing terms as set forth in this Agreement, this Agreement and the associated executed Service Order(s) may not be amended, supplemented or changed without both parties' prior written consent.
- (b) **No Assignment or Transfer.** The parties may not assign or transfer (directly or indirectly by any means, by operation of law or otherwise) this Agreement and the associated Service Order(s), or their rights or obligations hereunder to any other entity without first obtaining written consent from the other party, which consent shall not be unreasonably withheld; provided, however, that without Customer's consent, Charter may assign this Agreement and the associated executed Service Order(s) to affiliates controlling, controlled by or under common control with

Charter, or to its successor-in-interest if Charter sells some or all of the underlying communications system.

- (c) Severability. If any term, covenant, condition or portion of this Agreement or any related, executed Service Order(s) shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or any related, executed Service Order(s) shall not be affected and each remaining term, covenant or condition shall be valid and enforceable to the fullest extent permitted by law.
- (d) Governing Law. The law of the state in which the Services are provided (excluding its conflicts of law provisions) shall govern the construction, interpretation, and performance of this Agreement, except to the extent superseded by federal law. IN ANY AND ALL CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, ITS NEGOTIATION, ENFORCEABILITY OR VALIDITY, OR THE PERFORMANCE OR BREACH THEREOF OR THE RELATIONSHIPS ESTABLISHED HEREUNDER, CUSTOMER AND CHARTER EACH HEREBY WAIVES ITS RIGHT, IF ANY, TO TRIAL BY JURY.
- (e) Both parties had the opportunity to review and participate in the negotiation of the terms of this Agreement and the Service Order(s) and, accordingly, no court construing this Agreement and any Service Order(s) shall construe it more stringently against one party than against the other.
- (f) No Third Party Beneficiaries. The terms of this Agreement and the parties' respective performance of obligations as described are not intended to benefit any person or entity not a party to this Agreement, and the consideration provided by each party hereunder only runs to the respective parties hereto, and that no person or entity not a party to this Agreement shall have any rights hereunder nor the right to require performance of obligations by either of the parties hereto.
- (g) Waiver. Except as otherwise provided herein, the failure of Charter to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.



## **SPECTRUM BUSINESS® SERVICE LEVEL ATTACHMENT**

### **CUSTOM CLASS OF SERVICE**

**ATTACHMENT 1 TO  
Service Order dated  
Under the  
Data Networking SERVICES AGREEMENT  
BY AND BETWEEN Charter Fiberlink-Nebraska, LLC AND State of Nebraska  
DATED**

*(This Attachment 1 applies only to the point-to-point Optical Ethernet service configurations EPL, EVPL and EPLAN.)*

#### **1. Enterprise and Strategic Market Network Operations Center: 866.603.3199**

Spectrum Business® ("Charter") operates and maintains the Enterprise and Strategic Market Network Operations Center ("ESM NOC"), which is staffed 24 hours a day, 7 days a week, 365 days a year. To report suspected problems with your fiber-based Service(s) call the Enterprise and Strategic Market Network Operations Center for support - 866.603.3199.

- a. **Trouble Reporting Process.** Provide the following information when calling the ESM NOC: Company name
- Your name
  - Your phone number
  - Customer Contact name and number
  - Customer account number
  - Customer trouble ticket number
  - Fiber/Service origination and termination locations including provided site IDs
  - Time of trouble onset
  - Nature of observed trouble
  - Is Service(s) released for testing?

Once our ESM NOC representative has received all of this information, a Customer Trouble Ticket will be assigned and investigation of your report will begin. After the status of your report has been determined, the ESM NOC will contact your designated contact individual at the appropriate number to discuss the findings.

If necessary, Charter shall endeavor to have a maintenance employee at the Service Location requiring unscheduled maintenance work, within four (4) hours after the time Charter becomes aware of an event requiring such unscheduled maintenance, unless delayed by circumstances beyond the reasonable control of Charter. In the event that any maintenance hereunder requires a traffic/truck roll or reconfiguration involving cable, fiber, electronic equipment, or regeneration or other facilities of the Customer, then Customer shall, at Charter's reasonable request, make such personnel of Customer available as may be necessary in order to accomplish such maintenance. Such Customer personnel shall coordinate and cooperate with Charter in performing such maintenance as required of Charter hereunder. In event it is determined that any trouble resulting in a traffic/truck roll was necessitated/caused by Customer or its agents or contractors, Charter shall have the right to charge and Customer shall pay Charter's then current rates for such traffic/truck roll and associated work.

- b. **Enterprise and Strategic Market Network Operations Center Escalation List.** The purpose of escalations is to ensure that adequate resources are mobilized quickly and tracked appropriately and that the underlying Service issue is resolved in the shortest possible time. To that end, the ESM NOC provides an escalation list to our customers and service partners for the purpose of escalations within the ESM NOC. Customer shall utilize the ESM NOC Escalation List, as updated from time to time, to report and seek immediate initial redress for Service exceptions observed/experienced. The current ESM NOC Escalation List is on the following page.



**Enterprise and Strategic Market NOC (Fiber & VIP Support)**  
**1-866-603-3199 or 502-420-7298**

Table 1. ESM NOC Escalation List

Level	Name/Title/Email	Contact Numbers
First Level Escalation  1 Hour	<b>Enterprise and Strategic Market NOC Lead Engineer</b>	1-866-603-3199 1-502-420-7298 (Request Escalation)
Second Level Escalation  2 Hours	<b>Enterprise and Strategic Market NOC Shift Manager</b>  1 <sup>st</sup> Shift – (7AM – 3 PM Eastern) Matt Loomis <a href="mailto:matt.loomis@charter.com">matt.loomis@charter.com</a>  2 <sup>nd</sup> Shift – (3 PM – 11 PM Eastern) Khalil Johnson <a href="mailto:khalil.johnson@charter.com">khalil.johnson@charter.com</a>  3 <sup>rd</sup> Shift – (11 PM – 7 AM Eastern) Mike Dumberg <a href="mailto:michael.dumberg@charter.com">michael.dumberg@charter.com</a>	1-866-603-3199 1-502-420-7298 (Request Shift Manager Level Escalation)
Third Level Escalation  4 Hours	<b>Enterprise and Strategic Market NOC Sr. Manager</b>  Gerald Mascho <a href="mailto:gerald.mascho@charter.com">gerald.mascho@charter.com</a>  Anthony Abounader <a href="mailto:anthony.abounader@charter.com">anthony.abounader@charter.com</a>	1-866-603-3199 (Request Sr. Manager Level Escalation)  502-420-7467 office 502-442-4494 cell  502-420-7294 office 502-379-9111 cell
Fourth Level Escalation  6 Hours	<b>Enterprise and Strategic Market NOC Director</b>  Ronald Payne <a href="mailto:ronald.payne@charter.com">ronald.payne@charter.com</a>	1-866-603-3199 1-502-420-7298 (Request Director Level Escalation) 502-420-7303 office 502-643-7888

## 2. Preventative, Emergency and Demand Maintenance.

a. Preventative Maintenance. "Preventative Maintenance" refers to upgrades, and or routine maintenance or necessary alteration/repair of hardware or software or upgrades to increase capacity. Preventative Maintenance may temporarily degrade the quality of the service, including possible outages. Preventative Maintenance shall be undertaken only between the hours of 00:00:01 and 06:00:00 Local Time. Charter shall endeavor to provide at least three (3) days prior notice to the other Party of Preventative Maintenance

b. Emergency Maintenance (Unscheduled Maintenance or Repair). "Emergency Maintenance" shall mean repair work not reasonably anticipated but which requires immediate action to restore network connectivity, use or efforts to correct network conditions that are likely to cause a material service outage, or address any issue reasonably observed as a threat to Charter resources (person, equipment or facility). Work to address an Emergency Maintenance situation may degrade the quality of or cause outages in the services. Charter may undertake Emergency Maintenance at any time deemed necessary but shall make commercially reasonable efforts to perform such maintenance within the hours identified for Preventative Maintenance if possible. Charter shall provide notice of Emergency Maintenance to Customer as soon as is commercially practicable under the circumstances, and when reasonably possible, in advance. Whenever prior notice is given, Customer agrees to acknowledge notice of the emergency event in a reasonable period of time and will take necessary steps to notify key personnel internally in order for Charter to correct or repair the affected area.

c. Demand Maintenance. "Demand Maintenance" is work necessary to restore service to one or more end-users of Charter and/or maintenance work required when a deficiency is found when performing Preventative Maintenance work. Charter may undertake Demand Maintenance immediately. Charter shall provide notice of Demand Maintenance to Customer as soon as is commercially practicable under the circumstances.

d. Notification. Charter shall provide Customer with notice of Preventative Maintenance or as soon as possible in the case of Emergency or Demand Maintenance to the following by means of electronic mail notification and telephone:

Customer:	Name: _____	E-Mail: _____
	Phone: _____	Alt. Phone: _____

Customer shall notify Charter of any failure, interruption or impairment of the Service, or any event imminently likely to cause the failure, interruption or impairment in the operation of Service for which it is aware

Additionally. Customer shall notify Charter in advance any time Customer has knowledge that another person or entity is anticipated to engage in construction activities or otherwise dig within five (5) feet of the Cable

**Enterprise and Strategic Market Network Operations Center (ESM NOC):**  
Phone: 866.603.3199

Email: [ESMNOCC@charter.com](mailto:ESMNOCC@charter.com)

Customer shall have the right to be present, at its sole cost and expense, during the performance of any Maintenance so long as this requirement does not interfere with Charter's ability to perform its obligations under this Agreement. In the event that Maintenance is canceled or delayed for whatever reason as previously notified, Charter shall notify Customer at Charter's earliest opportunity, and will comply with the provisions of the previous sentence to reschedule any delayed activity

3. **Service Configurations: Optical Ethernet.** Optical Ethernet Service provides Ethernet connectivity between two or more Service Locations within a metropolitan or regional area. Charter designs its Optical Ethernet Service to meet the Metro Ethernet Forum (MEF) specifications for EPL, EVPL, and EPLAN services and each has been MEF 9 and MEF 14 certified. The service is full-duplex and offers data rates ranging from 10 Mbps to 10 Gbps. Optical Ethernet is available in the following configurations:

- a. Ethernet Private Line (EPL) – EPL provides a transparent point-to-point connection between Customer Ethernet ports
- b. Ethernet Virtual Private Line (EVPL) – EVPL provides a flexible point-to-point Ethernet connection.
- c. Ethernet Private Local Area Network (EPLAN) – EPLAN provides a transparent multipoint-to-multipoint connection between Customer Ethernet ports

Furthermore, the Optical Ethernet Services will either be "On-Net" or may be partly "Off-Net". An "On-Net Service" is a service where all locations are served solely by Charter's Network. An "Off-Net Service" is a service in which one (EPL, EVPL) or more (EPLAN) of the locations to be connected are not served entirely by Charter's Network. Off-Net Services have a portion of the Services provided by a provider other than Charter (aka Type II services).

**4. Performance:** Optical Ethernet Service Performance Parameter Objective (also referred to as "SLA" for convenience purposes) for Class of Service ("CoS"). The selected Charter Class of Service (CoS) serves to prioritize traffic streams relative to each other within Charter's network. The SLA applicable to the Custom CoS includes the following metric: Availability.

The SLA applies to the On-Net portion of a Service Configuration. For example:

- If the end-to-end Service Configuration EPL is On-Net, then the SLA applies to the entire connection (from Customer Ethernet port to Customer Ethernet port).
- If the end-to-end Service Configuration EVPL has one Customer Ethernet port Off-Net and the other Customer Ethernet port is On-Net, then the SLA applies to the Charter On-Net portion of the connection (from Customer Ethernet port to the Charter interconnection with the 3<sup>rd</sup> Party Provider).

For each item set forth herein, performance herein shall not include any negatively impacting events arising from (i) the acts or omissions of Customer, its agents, employees, or end-users, third parties; or (ii) Customer-provided equipment or facilities beyond the demarcation point; or (iii) Force Majeure Events; or (iv) periods of scheduled maintenance; or (v) any time for which Charter is not provided access to the facilities if necessary to address any issues.

Table 2: Definitions.

Performance Parameter Objective per Service (aka 'circuit')	Parameter Description
Availability	* Calculated as a function of the lost frames in the network. Once 10 or more frames are lost within a given test period, each lost frame will reflect 1 sec of unavailability.

Table 3: Performance Parameters.

Performance Parameter	Custom CoS (EPL, EVPL, EPLAN)
Availability	99.9%

**5. Service Credits.** The percentage of Service Credit will be a percentage of the applicable MSF and calculated as set forth with the table below.

Table 4: Availability Service Credit Table

Monthly Availability Percentage = X	Service Credit Percentage x MSF
99.9 % ≤ x ≤ 100%	No Credit
99.5% ≤ x < 99.9%	5%
99% ≤ x < 99.5%	10%
98.5% ≤ x < 99%	15%
98% ≤ x < 98.5%	20%
95% ≤ x < 98%	25%
90% ≤ x < 95%	50%
x < 90%	100%

Any Service Credits applied in accordance with this Agreement (unless otherwise expressly stated) will be based on the Customer's MSF for those Service Locations and specific per the Ethernet Service affected by the missed SLA.



Non-recurring, equipment and usage-based charges are excluded. In no event shall the total of any Service Credits per individual Service Location exceed 100% of the MSF for the affected Services. Credits hereunder shall not be cumulative per circuit. Circuit unavailability shall be cumulative for calculating Service Credits. The Customer must contact the ESM NOC (or successor applicable toll-free number) to request a Service Credit. Charter will exercise commercially reasonable efforts to respond to such Service Credit requests within fifteen (15) business days of receipt thereof. The approved Service Credit will be applied on the billing cycle following the date Charter makes its credit determination. Service Credits shall be Customer's sole and exclusive remedy for Charter's failure to meet the Performance Parameters set forth herein.